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1987 ANNUAL REPORT
OF THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES

Submitted to the Members of the
General Assembly of the State of Illinois

Membership

Senator Emil Jones, Jr. Co-Chairman
Representative Myron J. Olson, Co-Chairman
Senator Laura K. Donahue, Vice Chairman
Representative Monroe Flinn, Secretary

Representative Larry W. Hicks
Representative Ellis B. Levin
Representative Thomas J. McCracken, Jr.
Representative W. Thomas Ryder
Senator Kenneth Hall
Senator Doris Karpel
Senator William L. O'Daniel
Senator Harry "Babe" Woodyard

Bruce A. Johnson, Executive Director

509 South Sixth Street
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Springfield, Illinois 62701

January 1, 1988

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

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REP. MYRON J. OLSON

VICE-CHAIRMAN:
SEN. LAURA KENT DONAHUE

SECRETARY:
REP. MONROE L. FLINN

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WILLIAM L. O'DANIEL
HARRY "BABE" WOODYARD

HONORABLE MEMBERS OF THE 85TH GENERAL ASSEMBLY

Ladies and Gentlemen:

We hereby submit the 1987 Annual Report of the Joint Committee on Administrative Rules. As Co-Chairmen of the Joint Committee, we are happy to report the continued progress of the oversight process in Illinois. An overview of the Joint Committee's rules review activities can be found in the following pages.

We gratefully acknowledge your continued support and assistance and we encourage all members of the General Assembly to take an active role in this vital oversight function which guarantees that the public right to know is protected through the promulgation of specific rules which are applied equally to everyone regulated. We welcome your suggestions and comments on agency rules and the development of the role of the Joint Committee. Only as each of us as elected representatives becomes concerned and involved in the oversight process, can the Joint Committee, acting on your behalf, ensure that the intent of the legislation that we pass is upheld.

Respectfully,

Senator Emil Jones, Jr.
Co-Chairman

Representative Myron Olson
Co-Chairman

1987 ANNUAL REPORT

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INTRODUCTION

The Joint Committee on Administrative Rules was created by the Illinois General Assembly in 1977 as a mechanism for legislative oversight of the rulemaking process in Illinois. The Illinois Administrative Procedure Act summarizes the Joint Committee's role as the "promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." This provision established the Joint Committee's two major functions: (1) working with State agencies to improve the rulemaking process and agencies' rules, and (2) promoting public understanding of rules and the rulemaking process.

The Joint Committee was established as a legislative support services agency by the Legislative Commission Reorganization Act of 1984. The Joint Committee's principal programs and activities include:

- Review of general rulemakings within statutory time periods to ensure that new rulemaking proposals are within the agency's statutory authority, are legally proper, and meet the procedural requirements of the Illinois Administrative Procedure Act.
- Review of emergency and peremptory rulemakings to ensure that these rules comply with the statutory requirements because these rules are not subject to the public comment period.
- Review of agency rules and policies to determine whether agency rules have been properly promulgated, and whether rules are unauthorized or unreasonable, or result in serious impact upon the public.
- Public Act review to determine the necessity for new or amendatory rulemaking in response to legislative changes.
- Legislative activities which ensure that the requirements of the Illinois Administrative Procedure Act are followed.
- Publication of Illinois Register, a weekly newsletter that highlights State agency rulemaking activities.

This Annual Report contains a narrative of the Joint Committee's activities during 1987, as well as a statistical summary of the rulemaking activities of State agencies. It also includes a summary of the Joint Committee drafted and sponsored legislation, as well as other pieces of legislation amending the Illinois Administrative Procedure Act, that were passed during the 1987 session of the 85th General Assembly. All Joint Committee legislation is the result of the review of State agency rules. Appendix A contains a historical overview of the Joint Committee as well as pertinent historical statistics, and Appendix B provides the most recent version of the Illinois Administrative Procedure Act.

Information about the operations of the Joint Committee, and about State agency rules and rulemakings, are supplied to individual members of the General Assembly, members of the public, lobbyists, and organizations upon request. Requests include copies of rules, hearing transcripts, or status information regarding certain rules or types of rules. This information is transmitted promptly to the requesting entity.

MEMBERSHIP

The Joint Committee on Administrative Rules consists of twelve members who are appointed by the legislative leadership. Membership is equally apportioned between the two houses and the two political parties. Two co-chairmen are selected by the members of the Joint Committee. The co-chairmen cannot be members of the same house or the same political party. The members also select a vice-chairman and a secretary.

The members receive no compensation for their services, but are reimbursed for travel expenses. The Joint Committee maintains a full-time staff of twenty-seven persons in Springfield. Legislators who presently serve on the Joint Committee are listed on the first page of this report.

Former members of the Joint Committee are:

Arthur L. Berman	Thaddeus "Ted" Lechowicz
Prescott E. Bloom	Larry Leonard
Glen L. Bower	Richard Luft
Jack E. Bowers	John W. Maitland, Jr.
Woods Bowman	Lynn Martin
John Cullerton	John M. Matejek
Michael Curran	Roger McAuliffe
Richard M. Daley	A. T. "Tom" McMaster
Vince Demuzio	David J. Regner
James H. Donnewald	Jim Reilly
Jim Edgar	Philip J. Rock
James Gitz	George Sangmeister
Alan J. Greiman	Frank D. Savickas
Carl E. Hawkinson	Sam Vinson
Jeremiah E. Joyce	Richard A. Walsh
Douglas N. Kane	Robert C. Winchester
Richard Kelly, Jr.	Kathleen Wojcik
Bob Kustra	Harry "Bus" Yourell

REVIEW OF GENERAL RULEMAKING

State agencies proposed 609 general rulemakings during 1987. (See Table 1 for a breakdown of general rulemakings by agency, and Table 12 for a comparison of general rulemaking from 1978 through 1987). The Joint Committee issued 176 objections, 67 recommendations and 1 filing prohibition to general rules (see Table 2) during the same period. The Joint Committee also issued 3 objections to existing rules (see Table 4). Review of the rules by the Joint Committee resulted in changes to the vast majority of the proposals. The changes varied from minor drafting and editing revisions to extensive, substantive rewrites of rules. This section of the report explains the general rulemaking process and the criteria used by the Joint Committee in evaluating rules. Also included is a summary of some of the general rulemakings considered by the Joint Committee in 1987.

General Rulemaking Process

Section 3.09 of the Illinois Administrative Procedure Act defines "rule" as:

each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulemakings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms.

Rules must be promulgated pursuant to the Act in order to be enforced by a State agency. There are three methods for promulgating a rule.

Section 5.01 of the Act explains the general rulemaking procedure. This procedure must be used for all rules which are not (1) related solely to agency management, personnel practices, or to public property, loans or contracts, (2) an emergency rulemaking as defined by Section 5.02 of the Act, or (3) a peremptory rulemaking as defined by Section 5.03 of the Act.

Section 5.01(a) explains the "first notice," or public notice and comment requirements. Agencies must publish the text of proposed rules in the Illinois Register, a weekly publication of the Office of the Secretary of State, and accept public comments on the rulemaking for the length of time specified in the notice which must accompany the text. At least 45 days' notice of the intended rulemaking action must be given to the public. This time is called the "first notice period," and it begins on the day that the notice of general rulemaking appears in the Register. The primary purpose of the first notice

period is to provide the regulated public with an opportunity to review and comment upon the rulemaking proposal.

Some agencies hold public hearings on their proposals in order to solicit comments. The Departments of Agriculture and Public Health often hold such hearings. Section 5.01 also provides that agencies must hold public hearings whenever the agency finds that a hearing would elicit public comments which might not otherwise be submitted, or if a request for a hearing is made by 25 interested persons, an association representing at least 100 persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government, and is received by the agency within 14 days after publication of the rulemaking in the Illinois Register.

After the expiration of the "first notice period," agencies are required to submit the proposed rules, along with any changes made in these rules during the first notice period, to the Joint Committee for review. Agencies submit this information in the form of a "second notice," which must include the text and location of any changes made in the rule, a final regulatory flexibility analysis which reports the effects of the rule on small businesses, an evaluation of comments received regarding the rule during the first notice period, an analysis of the anticipated effects of the rule, the justification and rationale for the rule, and, if requested by the Joint Committee, an analysis of the economic and budgetary effects of the rule.

The Joint Committee reviews the rule based upon the criteria outlined in the Committee's Operational Rules (1 Ill. Adm. Code 220). These criteria include legal and rulemaking authority, compliance with legislative intent and statutory authority, compliance with State and federal constitutions and other laws, adequacy of standards and criteria for the exercise of discretionary powers, clarity, consideration of the economic and budgetary effects of the rule, compliance with the Regulatory Flexibility Law and the Illinois Administrative Procedure Act, and compliance with the agency's rulemaking requirements. Pursuant to these review criteria, the Joint Committee raises issues regarding the rules.

If all issues are resolved, the Joint Committee will certify no objection to the rule, which enables the agency to adopt the rule by publication of the rule in the Illinois Register and filing an official copy of the rule with the Office of the Secretary of State. If the issues are not resolved, they are presented in the form of recommendations for Joint Committee action. The types of action recommended include objection, suspension, or legislation. Table 3 breaks down the number of objections and recommendations issued by the Joint Committee by type. If recommendations for objection are voted by the Joint Committee, they are published in the Illinois Register and the agency must respond to the objection within 90 days by modifying the rule, refusing to modify the rule, or withdrawing the rule. The response must be presented to the Joint Committee and be published in the Illinois Register. Agency responses may result in additional Joint Committee action. This action often results in an objection to an existing rule because agencies may adopt rules upon submission of a response to the Joint Committee. Agencies are also requested to respond to Joint Committee recommendations. Responses to recommendations are published in the Illinois Register and evaluated by the Joint Committee.

General Rulemaking in 1987

Fifty-five State agencies adopted 609 general rulemakings in 1987 (see Table 1) and the Joint Committee issued 176 objections and 67 recommendations to general rulemaking during the year (see Table 2). Once again, the Department of Public Aid adopted more general rules (87) than any other State agency (14.3% of the total). Other State agencies with a great deal of rulemaking activity included the Department of Commerce and Community Affairs (86, 14.1%), the Pollution Control Board (53, 8.7%), the Department of Rehabilitation Services (45, 7.3%), the Department of Public Health (27, 4.4%), the Department of Conservation (27, 4.4%) and the Department of Agriculture (26, 4.3%).

Table 3 breaks down the Joint Committee's objections and recommendations to general rulemakings by type. The most common objection to general rules is a violation of Section 4.02 of the Illinois Administrative Procedure Act, which requires State agencies to include precise standards in rules which implement discretionary authority. The Joint Committee issues 49 objections (27.8% of the total) on this basis in 1987. Two other common objections, which accounted for 30% of the total, were that the general rulemaking violated general rulemaking procedures or lacked statutory authorization. The most common recommendation issued in 1987, which was generally issued in conjunction with an objection based upon lack of, or conflict with, statutory authority, was that the agency seek legislation to remedy the problem. Thirty-four recommendations (50% of the total) were issued on this basis. Another common recommendation (13, 20% of the total) occurred when, during the course of a review, it became apparent that additional rulemaking was necessary in order to make the program complete.

Table 4 breaks down the Joint Committee's objections to existing rules by agency, and Table 5 breaks down these objections by type. The Joint Committee issues objections to existing rules when an objection was issued by the Committee to the general rule, and the objection was not remedied by the agency prior to adoption of the rule.

The text of the objections and recommendations issued by the Joint Committee to general rules and rulemakings during 1987 is included in another Committee publication entitled "1987 Index of Objections and Recommendations."

Significant General Rulemakings

Summarized in this section are several of the most important general rulemakings and Joint Committee objections and recommendations issued in 1987.

Department of Registration and Education

The Department of Registration and Education proposed an amendment to "Funeral Directors and Embalmers Act" (68 Ill. Adm. Code 250) in February

of 1987, to prohibit telephone solicitation and the use of unlicensed persons for the purposes of solicitation for pre-need funeral services. The Joint Committee objected to this amendment on the bases that: the Department lacks the statutory authority to prohibit the employment or the contracting of unlicensed persons for the purpose of solicitation for pre-need funeral arrangements; the Department lacks the statutory authority to prohibit a licensed funeral director from contacting a prospective client by telephone; the Department failed to consider the economic effects of the rule upon those regulated and failed to consider less costly alternatives to the rulemaking; and the Department failed to include in its first notice an initial regulatory flexibility analysis. The Joint Committee also voted to prohibit filing of this rulemaking with the Secretary of State for 180 days, since the Joint Committee believed the proposed rules constituted a serious threat to the public interest and welfare. The Joint Committee intended to introduce a joint resolution into the General Assembly to continue the prohibition. The resolution was not introduced, however, because the Department withdrew the rulemaking on December 4, 1987. No further action by the Joint Committee was necessary.

Capital Development Board

The Capital Development Board proposed rules entitled "Illinois Accessibility Code" (17 Ill. Adm. Code 400) in April of 1987, to replace the Board's current rules in setting the standards for accessibility to privately and publicly owned buildings for environmentally-limited persons. The Joint Committee objected to the Board's rules because, contrary to the Environmental Barriers Act, the rules (1) allow an owner to elect to make the greater of 5% or at least one of the dwelling units in a multi-story dwelling fully accessible rather than providing 20% of the units as adaptable, as the Act requires, and (2) provide for the use of estimated costs when calculating percentages of the reproduction cost of a building or facility.

The Board stated that a multi-story housing facility with 5% of the units as accessible is equivalent to the requirement in the Act that 20% of the units be adaptable. Public comment received by the Board indicated that several groups concerned with the rights of environmentally-limited people opposed the 5% requirement.

The Board explained that its reason for basing the percentage of reproduction cost on the estimated rather than actual combined cost is that architects cannot know the actual cost of alteration at the design stage when provisions for accessibility are made. The Joint Committee recommended that the Board seek legislation to give it the authority to allow an owner to elect between 5% accessibility and 20% adaptability, and to allow the use of estimated costs when calculating percentages of reproduction costs. The Board has not yet responded.

Department of Public Aid

The Department of Public Aid proposed amendments to "General Assistance" rules (89 Ill. Adm. Code 114) in July of 1987, to provide for a six-month extension of medical assistance for General Assistance family cases when General Assistance benefits are terminated due to increased income from employment. The Joint Committee objected to the rulemaking at its October 1987 meeting because the rule, as interpreted by a Departmental policy statement, is contrary to the legislative intent of Section 5-2 of the Public Aid Code. The Department's policy fails to afford a six-month extension of medical assistance to all eligible General Assistance families, whereas the Code maintains that all eligible General Assistance families in Illinois should benefit from the extension. The six-month extension of medical assistance benefits would not be granted to any General Assistance recipients outside of the City of Chicago since presently the Department directly administers cases and programs only in Chicago. The Department believes that the rulemaking correctly interprets PA 85-114. The Department refused to modify or withdraw its rulemaking in response to the Joint Committee's objection.

In November 1987, the Joint Committee approved legislation that amends the Public Aid Code to provide that whenever employment causes a termination of basic maintenance assistance, the six-month extension of medical assistance coverage shall be applied equally throughout the State, whether those eligible for such coverage receive it through general assistance programs administered by the Illinois Department, administered by individual townships and funded in part by the State, or administered by individual townships and not funded in part by the State. The legislation also provides that nothing in Section 6-1 of the Code shall be interpreted as allowing the Department to limit the extension of medical assistance coverage provided under Section 5-2 of the Public Aid Code to cities, villages, and incorporated towns of more than 500,000 population only.

State Board of Education

The State Board of Education proposed amendments to "Vocational Education" rules (23 Ill. Adm. Code 254) in March of 1987. This rulemaking implemented amendments to the federal Carl D. Perkins Vocational Education Act and the related federal rules. These vocational education programs include programs for the handicapped and disadvantaged, consumer and homemaker education programs, cooperative vocational education programs, high impact training services programs, work study programs, and programs for vocational student organizations. These rules provide for allocation of funds between these programs, applications for funding, evaluation of these programs, cooperative agreements, personnel qualification requirements and program improvement programs. The Joint Committee objected to this rulemaking because the Board implemented these rules prior to completion of the required rulemaking procedures of the Illinois Administrative Procedure Act and because the Board's Request for Proposals and Request for Applications contain policy not expressed in the Board's rules. The Joint Committee also objected to the rulemaking because the Board failed to develop measures for evaluating the effectiveness of vocational education programs in meeting the needs identified in the State Plan for Vocational Education. Finally, the Joint Committee suggested to the Board that prior to the adoption of its rules it provide a

copy of its revised Local Plan for Vocational Education for Joint Committee review of these documents for the existence of policy not contained in the Board's rules.

The Board responded to the Joint Committee's objections by acknowledging that it implemented the rule prior to completion of the rulemaking, but stated that it had not disapproved any plans for failure to comply with the rule. The State Board agreed to address the concerns of the Joint Committee regarding policy not contained in the rules in a new rulemaking.

The Board refused to modify or withdraw its rule in response to the Joint Committee's objection that the Board has failed to develop measures for evaluating the effectiveness of vocational education programs. The Board stated that an evaluation system is in place, but is in the process of being revised. The Board indicated that it would propose a rulemaking to address the Joint Committee's concerns when modifications to the evaluation system are finalized.

The Board submitted to the Joint Committee the Regional Education for Employment Plan (which replaced the Local Plan for Vocational Education) in response to the Joint Committee's recommendation to do so. After reviewing this plan, the Joint Committee recommended in December 1987 that the Board promulgate a rulemaking to amend its rules to include the policies in the Regional Education for Employment Plan that are not currently in the rules. The Board has not yet responded to this recommendation.

Illinois Racing Board

The Illinois Racing Board proposed rules entitled "Substance Abuse" (11 Ill. Adm. Code 508) in December of 1986. This proposed rulemaking replaced existing rules of the same title. By requiring breathalyzer tests for jockeys and drivers and urine tests for jockeys, drivers, starters, assistant starters and outriders, the Department sought in this rulemaking to prevent alcohol and drug abuse and its resultant damage. The rules detail when testing will be imposed upon an individual and the levels of alcohol and type of drugs prohibited, and establish procedures for the collection of samples. The rules also establish penalties for violations of the rules and outline procedures which ensure the confidentiality of test results. The Joint Committee objected to the rulemaking in April of 1987 for the following reasons: 1) the Board lacks the statutory authority to establish a human substance abuse control program requiring Board licensees to submit to breathalyzer and urine tests upon the order of a steward based upon either individualized suspicion or on a random basis, and because the rulemaking is of questionable constitutionality due to provisions allowing the Board to subject licensees to random drug testing; 2) the rule fails to detail the standards used by the Board to determine whether to suspend or assess a civil penalty against a licensee for his first violation of the drug rules, and in addition, fails to detail the standards used to determine the amount of the fine or the length of the suspension imposed; and 3) the rule is incomplete insofar as it fails to fully and clearly articulate policies of the Board governing steward inquiries for drug rule violations, as well as the procedures used in the drug testing program to handle and test referee urine samples. The Joint Committee recommended to the Board that it seek legislation to authorize the

Board to require occupational licensees to submit to breathalyzer and urine tests without a warrant, and to prescribe the conditions and limits under which such tests may be administered.

The Board responded to the Joint Committee's objection concerning the lack of statutory authority and the recommendation that the Board seek legislation to grant it authority by stating that it did not intend to seek legislation. The Board agreed to modify its rules to remedy the Joint Committee's objection concerning the lack of standards for suspension of and penalties against licensees for violation of the rules. The Board also clarified procedures used in the drug testing program in response to the Joint Committee's objection. The Board's modification, however, fails to include the clarification sought by the Joint Committee. The Joint Committee published a Notice of Failure of Modification to Remedy Objection to Proposed Rulemaking in the Illinois Register in response to the Board's modification of its rules. These rules became effective June 3, 1987.

TABLE 1
GENERAL RULEMAKING BY AGENCY

Aging, Department on	1
Agriculture, Department of	26
Alcoholism and Substance Abuse, Department of	3
Attorney General	2
Banks and Trust Companies, Commissioner of	3
Capital Development Board	6
Carnival-Amusement Safety Board	3
Central Management Services, Department of	11
Children and Family Services, Department of	3
Civil Service System, State Universities	1
Commerce and Community Affairs, Department of	18
Commerce Commission, Illinois	86
Community College Board, Illinois	2
Comptroller	3
Conservation, Department of	27
Corrections, Department of	8
Criminal Justice Information Authority, Illinois	2
Development Finance Authority	1
Education Loan Authority, Illinois Independent Higher	1
Education, State Board of	12
Educational Facilities Authority, Illinois	1
Elections, State Board of	3
Emergency Services and Disaster Agency	2
Employment Security, Department of	5
Energy and Natural Resources, Department of	2
Environmental Protection Agency	14
Export Development Authority, Illinois	1
Farm Development Authority, Illinois	3
Financial Institutions, Department of	3
Fire Marshal, Office of the State	5
Governor's Purchased Care Review Board	1
Health Care Cost Containment Council, Illinois	3
Health Facilities Planning Board	3
Hearing Aid Consumer Protection Board	1
Housing Development Authority, Illinois	1
Insurance, Department of	9
Labor, Department of	1
Local Governmental Law Enforcement Officers Training Board, Illinois	1

TABLE 1
GENERAL RULEMAKING BY AGENCY
(continued)

Mental Health and Developmental Disabilities, Department of	3
Mines and Minerals, Department of	7
Nuclear Safety, Department of	7
Pollution Control Board	53
Public Aid, Department of	87
Public Health, Department of	27
Racing Board, Illinois	9
Registration and Education, Department of	14
Rehabilitation Services, Department of	45
Revenue, Department of (1)	19
Savings and Loan Associations, Commissioner of	3
Scholarship Commission, State	13
Secretary of State	18
State Police, Department of	1
State Police Merit Board, Department of	2
Transportation, Department of	16
Veterans' Affairs, Department of	7
TOTAL	609

(1) The Illinois Department of the Lottery became an agency separate from the Department of Revenue in 1986.

TABLE 2
OBJECTIONS AND RECOMMENDATIONS ISSUED TO GENERAL RULEMAKING
BY AGENCY

<u>Agency</u>	<u>Number of Objections</u>	<u>Number of Recommendations</u>
Aging, Department on	1	-
Banks and Trust, Commissioner of	2	-
Capital Development Board	2	1
Central Management Services, Department of	6	-
Children and Family Services, Department of	4	2
Commerce and Community Affairs, Department of	7	5
Commerce Commission, Illinois	10	11
Comptroller	2	1
Conservation, Department of	4	2
Corrections, Department of	2	2
Education, State Board of	15	6
Elections, State Board of	1	1
Employment Security, Department of	5	-
Environmental Protection Agency	10	3
Governor's Purchased Care Review Board	1	-
Health Facilities Planning Board	1	-
Housing Development Authority, Illinois	2	-
Insurance, Department of	6	-
Labor, Department of	5	-
Labor Relations Board, Illinois Local	1	1
Labor Relations Board, Illinois State	1	1
Mental Health and Developmental Disabilities, Department of	1	1
Mines and Minerals, Department of	1	-
Pollution Control Board	8	1
Public Aid, Department of	29	10

OBJECTIONS AND RECOMMENDATIONS ISSUED TO GENERAL RULEMAKING BY AGENCY
(continued)

<u>Agency</u>	<u>Number of Objections</u>	<u>Number of Recommendations</u>
Public Health, Department of	10	3
Racing Board, Illinois	6	2
Registration and Education		
Department of	4	-
Rehabilitation Services,		
Department of	1	-
Revenue, Department of	10	5
Scholarship Commission,		
Illinois State	3	1
Secretary of State	1	4
State Banking Board of Illinois	5	-
State Police Merit Board,		
Department of	1	1
State Police, Department of	1	1
State Universities Civil		
Service System	1	-
Transportation, Department of	6	1
Trustees of the University of		
Illinois, Board of	-	1
 TOTAL	 176	 67

TABLE 3
OBJECTIONS AND RECOMMENDATIONS ISSUED TO GENERAL RULEMAKING
BY TYPE

Type of Objection	Number of Objections	Percentage of Total
Standards and Criteria	49	27.8%
Violates General Rulemaking Procedures	26	14.8%
Statutory Authority	22	12.5%
Conflicts with Authorizing Statute	22	12.5%
Violates Regulatory Flexibility		
Analysis Requirements	16	9.1%
Rules Incomplete	9	5.1%
Policy Not in Rules	7	4.0%
Violates State Mandates Analysis		
Requirements	5	2.8%
Lack of Adequate Justification and Rationale	3	2.0%
Retroactive Effect	3	1.7%
Violates Economic and Budgetary Effects Analysis Requirements	2	1.1%
Rules Conflict with Agency's Rules	2	1.1%
Rules Do Not Adequately Implement Statutory Requirements	2	1.1%
Violates Legislative Intent	2	1.1%
Rules Not Clear/Terminology Vague	2	1.1%
Rules Do Not Reflect Agency Policy	1	.6%
Violates Incorporation by Reference Procedure	1	.6%
Rules Unconstitutional	1	.6%
Violates Federal Regulations	1	.6%
TOTAL	176	

TABLE 3
 OBJECTIONS AND RECOMMENDATIONS ISSUED TO GENERAL RULEMAKING
 BY TYPE
 (continued)

<u>Type of Recommendation</u>	<u>Number of Recommendations</u>	<u>Percentage of Total</u>
Agency Seek Legislation	34	50.7%
Submit Policy/Timetable to Joint Committee	17	25.4%
Rulemaking	13	19.4%
Agency Postpone Rulemaking Pending Legislative Action	2	3.0%
Agency Seek Legislation and Rulemaking	1	1.5%
 TOTAL	 <u>67</u>	

<u>Other Types of Action</u>	<u>Number of Actions</u>	<u>Percentage of Total</u>
Filing Prohibition	1	100%

TABLE 4
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EXISTING RULES
BY AGENCY

<u>Agency</u>	<u>Number of Objections</u>	<u>Number of Recommendations</u>
Department of State Police Merit Board	-	1
Department of Mines and Minerals	1	-
Illinois State Scholarship Commission	1	-
TOTAL	<u>2</u>	<u>1</u>

TABLE 5
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EXISTING RULES
BY TYPE

Type of Objection	Number of Objections	Percentage of Total
Violates General Rulemaking Procedures	2	100%

Type of Recommendation	Number of Recommendations	Percentage of Total
Rulemaking	1	100%

REVIEW OF EMERGENCY AND PEREMPTORY RULEMAKING

The Illinois Administrative Procedure Act includes two provisions which permit agencies to adopt rules by methods other than the general rulemaking process. These methods, emergency and peremptory rulemaking, allow agencies to adopt rules within a shorter period of time than as provided in the general rulemaking process. The use of emergency and peremptory rulemaking, which provides for the immediate implementation of a rule, is scrutinized by the Joint Committee because these processes circumvent the public notice and comment provisions of the Act. Twenty-one State agencies adopted 51 emergency rulemakings during 1987. (See Table 13 for a comparison of emergency rulemaking from 1980 through 1987.) In addition, five State agencies adopted 32 peremptory rulemakings in 1987. (See Table 14 for a comparison of peremptory rulemaking from 1980 through 1987.) The Joint Committee issued 11 objections and 10 recommendations to emergency rules (Table 7) and 3 objections to peremptory rules (Table 9).

Emergency Rulemaking Process

Section 5.02 of the Act authorizes the use of emergency rulemaking if the promulgating agency determines that a situation exists which threatens the public interest, safety or welfare, and which requires the adoption of a rule on fewer days' notice than is required for general rulemaking. Emergency rules can become effective immediately and can remain in effect for a maximum of 150 days. Agencies which want to keep rules adopted on an emergency basis in effect for a longer period of time must propose and adopt the rule using the general rulemaking provisions of the Act. Certain restrictions are placed upon the use of emergency rulemaking because there is no notice and comment period or prior review by the Joint Committee. First, the emergency rule can only contain those provisions which are in direct response to the emergency situation. Second, an agency cannot adopt an emergency rule that has "substantially the same purpose and effect" more than once in any 24 month period. Third, the agency must inform the affected public of the emergency rule. Through the emergency rulemaking procedures, the Illinois Administrative Procedure Act provides agencies with necessary flexibility to respond to emergency situations, but balances this with the temporary nature of the rule and the restrictions imposed.

Emergency Rulemaking in 1987

Twenty-one State agencies adopted 51 emergency rulemakings in 1987, and the Joint Committee issued 11 objections and 10 recommendations during that period. The Department of Public Aid adopted more emergency rules than any other State agency, with eighteen, which accounted for 35% of the total. The Department of Central Management Services adopted 4 emergency rules (8% of the total) and three agencies--the Department of Public Health, the Illinois Commerce Commission and the Environmental Protection Agency--each adopted 3 emergency rules (for a total of 18% of the total). Most emergency rules were justified on the basis of a statutory change, either state or

federal, a delay in implementation of which would constitute a threat to the public interest, safety or welfare.

Table 8 breaks down the Joint Committee's objections and recommendations to emergency rulemakings by type. The most common objection to emergency rules is a violation of the emergency rulemaking procedures. This occurs when there is no threat to the public interest, safety, or welfare which justifies the emergency. The Joint Committee issued 5 objections (45% of the total) on this basis in 1987. Another common objection, which accounted for 27% of the total, was that the State agency which adopted the emergency rule created the emergency either through action or inaction. The Illinois Supreme Court held, in Senn Park Nursing Center v. Miller, 104 Ill. 2d 169 (1984) that an agency-created emergency could not justify the use of emergency rulemaking. The Joint Committee also reviews the statutory authority for emergency rules and issued 1 objection on the basis that the agency did not have the statutory authority for the rule. The Joint Committee also issued 10 recommendations that an agency seek legislation to grant the proper authority.

The text of the objections and recommendations issued by the Joint Committee to emergency rules and rulemaking during 1987 is included in another Committee publication entitled "1987 Index of Objections and Recommendations."

Significant Emergency Rulemaking

Summarized in this section are several of the most important emergency rulemakings and Joint Committee objections and recommendations issued during 1987.

The Department of Commerce and Community Affairs adopted emergency amendments to "Enterprise Zone Program" rules (14 Ill. Adm. Code 520) in June 1987. The amendments set forth procedures for granting exemptions from utility taxes for business enterprises located in Enterprise Zones and for High Impact Businesses located in federally-designated Foreign Trade Zones or Subzones, provided the business enterprises make eligible investments that create or retain jobs in Illinois. The Joint Committee recommended in July of 1987, that if the Department wishes to define the amounts and types of eligible investments that business enterprises must make in order to receive State utility tax exemptions, that it seek legislation to authorize it to do so. The Joint Committee also recommended to the Department that if it wishes to promulgate rules allowing it to approve tax exemptions for business enterprises whose investments are not yet placed in service, or to require that business enterprises granted tax exemptions prior to placing investments in service repay the exempted taxes if they are decertified for failure to place eligible investments in service within twelve months of certification, that the Department seek legislation to clearly allow these policies. The Department did not respond to the Joint Committee's recommendations.

The Department of Public Health adopted emergency rules entitled "Illinois Alzheimer's Disease and Related Disorders Assistance Code" (77 Ill. Adm. Code 710) in December 1986, to implement the Alzheimer's Disease Research Act and the Alzheimer's Disease Assistance Act. The Joint Committee objected to this rulemaking because the rule fails to include relevant Department

policies that require the submission of a budget with the application for grants to fund research for the purpose of finding a cure for Alzheimer's disease and the contents of such a budget. The Department failed to respond to the Joint Committee's objection and, therefore, refused to repeal or amend the rule. The Joint Committee has drafted legislation that would not allow the Department to require the submission of a budget until the Department adopts rules that include precise policies for the submission of such budgets.

The Department of Public Aid added through the use of emergency rulemaking new sections to "General Assistance" (89 Ill. Adm. Code 114) in November 1987. This rulemaking repeals rules governing the general assistance jobs program and adds new provisions for a system of employment, training, rehabilitation, and advocacy services for adult general assistance clients in the City of Chicago. Under this restructuring of general assistance, persons who are able to work will be placed in Project Chance, and those clients who are found to be chronically medically unable to work or attend training programs will be referred for federal Supplemental Security Income (SSI) advocacy. In addition, clients who are found to be able to work but who have drug, alcohol, or mentally-related barriers to employment will be referred for rehabilitation services. The rulemaking also specifies the requirements for clients under the employment training program component, as well as sanctions for clients who fail to comply with employment and training requirements. The Joint Committee made the following recommendations in December 1987: 1) if the Department believes that it should provide special needs benefits to persons who have filed an application for federal SSI and are pending a medical employability determination by the Department, rather than limit the provision of special needs benefits to persons who have filed the federal SSI application and been found medically unable to participate in Project Chance in the Department, it seek legislation to clarify its authority to so provide such benefits; 2) if the Department believes it should be authorized to exempt persons from participation in Project Chance for reasons in addition to those specified in Section 6-8(e) of the Illinois Public Aid Code, the Department should seek legislation to clarify its authority to exempt additional groups of individuals; 3) if the Department believes it should reinstate a client prior to the end of the three or six-month sanction period and will treat an instance of non-cooperation as if it did not happen for purposes of applying the three-month sanction for the first instance of non-cooperation, it seek legislation to clarify its authority for such action; 4) if the Department believes that it should determine whether a person is medically able to participate in employment and training programs, even if the client has not filed an application for federal SSI, rather than make these determinations only in those cases where the client has filed an application for SSI, it seek legislation to clarify its authority to so make this determination; and 5) if the Department believes that it should fail to excuse persons with a physical barrier from participation in Project Change and fail to provide for the referral to rehabilitative services of those persons with physical barriers, it seek legislation to authorize such action. The Department has not responded to the Joint Committee's recommendations as of this time.

TABLE 6
EMERGENCY RULEMAKING BY AGENCY

Agriculture, Department of	1
Alcoholism and Substance Abuse, Department of	1
Central Management Services, Department of	4
Children and Family Services, Department of	1
Citizens Council on Children	1
Commerce and Community Affairs, Department of	2
Commerce Commission, Illinois	3
Conservation, Department of	1
Criminal Justice Information Authority	1
Education, State Board of	2
Emergency Services and Disaster Agency	1
Environmental Protection Agency	3
Financial Institutions, Department of	1
Housing Development Authority, Illinois	1
Nuclear Safety, Department of	1
Public Aid, Department of	18
Public Health, Department of	1
Registration and Education, Department of	3
Savings and Loan, Commissioner of	1
Scholarship Commission, State	2
Transportation, Department of	2
 TOTAL	51

TABLE 7
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EMERGENCY RULEMAKING
BY AGENCY

<u>Agency</u>	<u>Number of Objections</u>	<u>Number of Recommendations</u>
Children and Family Services, Department of	1	-
Commerce and Community Affairs, Department of	1	1
Commerce Commission, Illinois	2	-
Emergency Services and Disaster Agency	1	1
Environmental Protection Agency	1	1
Financial Institutions, Department of	1	-
Nuclear Safety, Department of	1	-
Public Aid, Department of	-	7
Public Health, Department of	1	-
Transportation, Department of	2	-
TOTAL	11	10

TABLE 8
OBJECTIONS AND RECOMMENDATIONS ISSUED TO EMERGENCY RULEMAKING
BY TYPE

Type of Objection	Number of Objections	Percentage of Total
Violates Emergency Rulemaking Procedures	5	45.5%
Agency Created Emergency	3	27.2%
Statutory Authority	1	9.1%
Policy Not in Rules	1	9.1%
Portions of Rulemaking Not Related to Emergency	1	9.1%
TOTAL	11	

Type of Recommendation	Number of Recommendations	Percentage of Total
Agency Seek Legislation	10	100%

Peremptory Rulemaking Process

Section 5.03 of the Act authorizes the use of peremptory rulemaking only in very restricted circumstances. Rules adopted by use of peremptory rulemaking may become effective immediately, and remain in effect indefinitely. Certain restrictions are placed upon the use of peremptory rulemaking because there is no notice and comment period or prior review by the Joint Committee.

First, peremptory rulemaking can be used only if the rulemaking is specifically required by federal law, federal rules and regulations, court order, or in the case of pay rates, collective bargaining agreement. Second, the federal law, federal rules and regulations, court order, or collective bargaining agreement must impose conditions which preclude compliance with the general rulemaking requirements. Third, the agency must not have any discretion regarding the content of the rule. Fourth, a notice of peremptory rulemaking must be filed with the Secretary of State for publication in the Illinois Register within 30 days after the change is required.

Peremptory Rulemaking in 1987

Seven State agencies adopted 32 peremptory rulemakings in 1987. The Pollution Control Board's use of peremptory rulemaking during 1987 (10 rules) accounted for 31% of the total peremptory rulemakings adopted during the year. The Board peremptorily amended "Hazardous Air Pollutants" (35 Ill. Adm. Code 231) and "New Source Performance Standards" (35 Ill. Adm. Code 230). The Board justified the use of peremptory rulemakings on the bases that Sections 111 and 112 of the Clean Air Act and Section 9.1(c) of the Environmental Protection Act require the Board's air pollution rules to be consistent with federal regulations. The Joint Committee objected to the peremptory amendments to "New Source Performance Standards" (35 Ill. Adm. Code 230) in June 1987, because the Board did not file the notice of peremptory rulemaking within 30 days after a change in the rules was required. The Board refused to modify the rule to meet the Joint Committee's objection because the Board believes that Section 9.1(c) of the Illinois Environmental Protection Act, which allows the Board a 60 day time period for filing peremptory rules, controls.

The Department of Public Aid adopted four peremptory amendments to "Food Stamps" (89 Ill. Adm. Code 121) during 1987. The Joint Committee objected to one of these rulemakings in August of 1987. The rulemaking, adopted July 10, 1987, expanded the group of aliens who are eligible for food stamps by implementing the Immigration Reform and Control Act of 1986 (Public Law 99-603). The Joint Committee objected to this rulemaking because portions of the rulemaking were not required immediately by the federal rules and should have been adopted pursuant to the general rulemaking provisions in Section 5.01 of the Illinois Administrative Procedure Act. The Department failed to respond to the objection and, therefore, refused to amend or repeal the rule.

All 9 peremptory rulemakings adopted by the Department of Agriculture (28% of the total) amended the "Meat and Poultry Inspection Act" (8 Ill. Adm. Code 125) rules. Peremptory rulemaking was required because the Federal Poultry Inspection Act and the Illinois Act require the Department's rules to mirror Federal regulations.

TABLE 9
PEREMPTORY RULEMAKING BY AGENCY

Agriculture, Department of	9
Central Management Services, Department of	7
Pollution Control Board	10
Public Aid, Department of	4
Rehabilitation Services, Department of	1
Revenue, Department of	1
Travel Regulation Council	<u>1</u>
	32

TABLE 10
OBJECTIONS AND RECOMMENDATIONS ISSUED TO PEREMPTORY RULES
BY AGENCY

Agency	Number of Objections	Number of Recommendations
Pollution Control Board	1	-
Department of Public Aid	1	
Department of Rehabilitation Services	1	

ECONOMIC IMPACT REVIEW

The Joint Committee's operational rules were revised in 1986 to clarify and emphasize the agencies' responsibilities to analyze fully the economic impact of rulemaking on the regulated public and on State agency budgets. Effective May 1, 1987, agencies have been required to complete new forms designed to provide more detailed economic information. These forms fall into three categories: (1) an analysis prepared by the agency of the economic impact of a proposed rule on the regulated public and the agency's budget, (2) a determination by the agency and also by the Department of Commerce and Community Affairs concerning whether the proposed rule creates or expands a state mandate, and (3) an analysis by the Department of Commerce and Community Affairs of the impact of the proposed rule on small businesses and small municipalities.

Beginning in January of 1988, the Joint Committee will review the economic impact forms and summary information for each rulemaking on the agenda at its monthly meetings. In this way, the Joint Committee strives to highlight the importance of understanding the economic cost and impact of agency regulatory actions and strives to promote more thorough economic analysis of proposed rules.

COMPLAINT REVIEW PROGRAM

Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act grant the Joint Committee the authority to review agency rules and policies. Section 7.04 allows the Joint Committee to "undertake studies and investigations concerning rulemaking and agency rules" and requires that the Committee "monitor and investigate" agency compliance with the provisions of the Illinois Administrative Procedure Act, "make periodic investigations of the rulemaking activities of all State agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy."

Section 7.07 of the Act authorizes the Joint Committee to issue objections to existing rules and assigns to the Committee the task of examining "any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form."

Part 260 of the Joint Committee's Operational Rules (1 Ill. Adm. 260), outlines the complaint review procedure. Upon receipt of a complaint, an initial review is conducted to determine the need for a full complaint investigation. Most of the inquiries received by the Joint Committee require basic information, such as copies of rules, explanations of the rulemaking process, or referrals to appropriate agencies. These inquiries are easily answered without a full investigation. Others, however, require more extensive research and study prior to formal Joint Committee action.

Two formal reviews were commenced in 1987. The complaints involved the Illinois Environmental Protection Agency and the Department of Labor. Also, the Joint Committee is monitoring several complaints which were registered in previous years.

1987 COMPLAINTS

Environmental Protection Agency

In January 1987, the Joint Committee began an investigation of a complaint lodged against the Illinois Environmental Protection Agency. The complainant alleged that the Agency's rules concerning the protection of potable water supplies from possible contamination sources were having an adverse affect on fire protection sprinkler systems. This problem was caused by the rules' requirements for reduced pressure zone backflow valves, which drop incoming water pressure to fire systems. Since the rules had already been adopted and the complainant had missed the public comment period during the rules' proposed stage, the only recourse appeared to be for the complainant to seek legislation. However, through negotiations with the Joint Committee, the Agency agreed to request that the Pollution Control Board promulgate rules covering this subject-matter, since such rules more properly fall under the Board's jurisdiction. The Board is currently taking this matter under consideration, and will probably propose these rules within the next one or two years pending an Economic Impact Statement to be done by the Department of Energy and Natural Resources.

Joint Committee involvement in this complaint ended in October 1987, when the Environmental Protection Agency asked the Pollution Control Board to promulgate rules, and therefore, the file was closed. Proposal of rules by the Board will give the complainant sufficient opportunity to comment during the public comment period. Also, as per the Agency's agreement with the Joint Committee, when these rules are adopted by the Board, the Agency will repeal its rules governing the same subject-matter.

Department of Labor

In September 1987, the Joint Committee received a complaint that was lodged against the Department of Labor. The complainant alleged that the Department had been enforcing general overtime provisions against motor carriers. There had been no change in state or federal law to explain the Department's policy changes. Investigation revealed that the Department had requested information and collected money between November 1986 and July 1987 from some Illinois motor carriers on behalf of truck drivers who had worked overtime. This enforcement process apparently has ceased and the Department is currently undecided as to whether it will enforce these overtime provisions against motor carriers in the future. The Joint Committee is continuing its investigation of this matter. Thus, this file remains "open".

1984, 1985, and 1986 COMPLAINTS

Department of Transportation

The Joint Committee is monitoring the progress of the Department of Transportation, Division of Water Resources, in its promulgation of "Rules for Construction in Rivers, Lakes, and Streams." In 1984, after a complaint review revealed that the rules had not been formally promulgated pursuant to the Illinois Administrative Procedure Act, but had been enforced by the Department for a number of years, the Joint Committee recommended that the Department adopt these rules. The Department proposed rules in December of 1984. However, based upon the extent and nature of the comments received by the Department during the public comment period, the Department ceased promulgation of the rules, indicating that new rules would be proposed.

The Department was contacted in March 1986 and asked about the status of the new rulemaking. The Department responded that an Attorney General's opinion regarding the Department's authority to regulate construction in Illinois waters had been requested. The Department further stated that it did not intend to issue a rulemaking notice until such time as the Attorney General issued his opinion. In August 1987, the Attorney General issued his opinion, which stated that the Department does have the authority to regulate construction in waters in Illinois, except where expressly limited by statute. The Department has promised to promulgate rules in June 1988, and therefore, this file will remain "open" pending the promulgation and Joint Committee approval of these rules.

Department of Employment Security

In 1985, the Joint Committee was asked to investigate the Department of Employment Security's policies regarding appeal hearings. The complainant contended that the Department was requiring that most hearings be conducted by telephone even in instances where the referee would have preferred an in-person hearing. The complainant also contended that the Department's rules regarding telephone hearings raise several constitutional issues, including the right to due process.

The Committee considered the issue at the February 1986 meeting, at which time it was decided to postpone consideration pending review of the Department's amendments to its rules entitled "Claims, Adjudication, Appeals and Hearings" (56 Ill. Adm. Code 2720). The Department proposed the amendments in the August 22, 1986, issue of the Illinois Register. These amendments changed the focus of the rules so that in-person hearings are required, unless certain exceptions are met. This new language met with the approval of the complainant and the Joint Committee, and the file was closed accordingly.

University of Illinois Division of Services for Crippled Children

In January 1986, the Joint Committee formally began an investigation of a complaint initiated against the University of Illinois Division of Services for Crippled Children (DSCC) regarding DSCC's failure under the Illinois Administrative Procedure Act to promulgate rules establishing eligibility criteria. Specifically, the complainant alleged discrimination in program eligibility based on the diagnosis of the child; discrimination in the accessibility and extent of services available to crippled children in Chicago; failure on the part of DSCC to coordinate its services with the Illinois Medicaid program; restrictions upon DSCC benefits available to Medicaid recipients; and lack of retroactive coverage of services provided to crippled children.

The Joint Committee's investigation of the allegations revealed that DSCC was operating without the benefit of properly promulgated rules, in violation of the Act. As a result, the Board of Trustees of the University of Illinois adopted rules entitled "Program Content and Guidelines for Division of Services for Crippled Children" (89 Ill. Adm. Code 1200), and "Division of Services for Crippled Children: Public Information, Rulemaking and Organization" (2 Ill. Adm. Code 5155). Senate Bill 489 was introduced by the Joint Committee to clarify the Division's authority to promulgate such rules. It was passed into law as PA 85-244 in September 1987, and the file was closed.

Department of Conservation

The Joint Committee is monitoring the progress of the Department of Conservation towards the implementation of Executive Order #7 (1985) and PA 84-1065. In 1986, a complaint was filed that alleged that the implementation by the Department of Conservation of Executive Order #7 along with PA 84-1065, which amended the "Illinois Endangered Species Protection Act," would pose great difficulties for county highway authorities in completing projects. Specifically, the complaint alleged that the implementation of

Executive Order #7 and the subsequent rules required by PA 84-1065, which provide for the protection of endangered animals or plants, were unduly restrictive, resulting in extended delays and, in some instances, forfeiture of projects by county highway authorities.

Rules implementing Executive Order #7 and the amendments to the Endangered Species Protection Act had not been proposed at the time that the complaint was filed with the Joint Committee. The Joint Committee met with representatives of the Department of Conservation and were given an approximate date for the proposal of such rules. The complainant was advised to hold any comment concerning such rules and submit them to the Department during the public comment period. In addition, it was suggested that the complainant request a public hearing. The Department proposed rules implementing the Endangered Species Protection Act in the December 12, 1986, issue of the Illinois Register. The rules, entitled "Consultation Procedures for Assessing Impacts of Agency Actions on Endangered and Threatened Species" (17 Ill. Adm. Code 1075), implement the consultation process which is designed to assist state agencies and local governments when assessing the adverse impact of projects on endangered or threatened flora or fauna. Pursuant to Section 5.01(d) of the Illinois Administrative Procedure Act, the Department permitted these rules to lapse beyond the one-year time limit for promulgation. The Department plans to propose new rules and the file will remain "open" pending the promulgation and Joint Committee review of these rules.

Department of Commerce and Community Affairs

The Joint Committee is monitoring the progress of the Department of Commerce and Community Affairs (DCCA) towards the promulgation of more specific rules pursuant to the Energy Assistance Act. Specifically, the complainant contended that DCCA must initiate rulemaking delineating the criteria to be followed when determining eligibility for the Illinois Residential Affordable Payment Program (IRAPP), which was created to implement the Energy Assistance Act (PA 84-1034). This legislation provided for the creation of a 12% payment program for low income utility customers and placed authority for IRAPP with the Illinois Commerce Commission. The Joint Committee considered the Commission's rules for the implementation of the IRAPP program, entitled "Energy Assistance" (83 Ill. Adm. Code 281), at its April 17, 1986 meeting, at which time thirteen objections and one recommendation were issued to the rules by the Committee.

Section 4 of the Energy Assistance Act states that to be eligible for the 12% payment program, "a person must be a public utility customer or an applicant for utility services and be eligible for the Home Energy Assistance Program." The Illinois Home Energy Assistance Program (IHEAP) is implemented by the Department of Commerce and Community Affairs (DCCA). Thus, the eligibility criteria for IRAPP and IHEAP are the same, and the Department of Commerce and Community Affairs processes applications and determines eligibility for IRAPP in conjunction with the IHEAP applications.

It was the contention of the complainant that DCCA must provide rules for processing IRAPP applications separate from the IHEAP application procedures. DCCA's involvement in the program, however, is not legislatively mandated, but is rather the result of a cooperative working

agreement between the Commerce Commission and DCCA for the processing of IRAPP applications. DCCA did agree, however, to propose rules that further define IHEAP in order to facilitate those parties interested in applying for either or both of the programs. Amendments to the rules entitled "State Administration of the Federal Low-Income Home Energy Assistance Program" (47 Ill. Adm. Code 100), were adopted by DCCA in the December 1, 1986, Illinois Register. The Department also agreed to propose, in early 1987, amendments to its definitions of "local administering agency" and "household income." Such amendments were proposed and were reviewed by the Joint Committee. To further clarify various aspects of IRAPP, the Joint Committee drafted and had passed into law PA 85-122. This file remains "open" pending final adoption of DCCA and Commerce Commission rules.

Department of State Police

In April 1986, the Joint Committee received a complaint regarding the Department of State Police. Specifically, the complaint dealt with criminal background investigations. The complaint alleged that the paperwork involved for background checks of school district employees was unduly burdensome. In question was the completion of two forms, the "inter-agency" and "user agreement."

The passage of Senate Bill 1052 (PA 84-1089) and the creation of Section 10-21.9 of the School Code require the Department of State Police to provide certain criminal history record information regarding school district employees to employing school districts. The Department explained that the user agreement is a required standard form specified by the U.S. Department of Justice governing the dissemination of criminal history record information, and is used by all agencies requesting such information for non-criminal justice purposes. The inter-agency agreement was prepared by the Department to conform to the requirements of the Intergovernmental Cooperation Act, and it specifically addresses the responsibilities of the Department and local school districts.

The Joint Committee concluded that the procedure was not unduly burdensome to local boards of education, since the completion of the "user-agreement" and the "inter-agency" agreement were necessary in order for the State Police to begin processing requests for background investigations, and since the forms must be completed only when the board sends the initial background check request. While the Joint Committee did not find that the completion of these forms was unduly burdensome, it did however, recommend at the October 9, 1986 meeting that the Department of State Police promulgate the rules necessary for the proper implementation of the teacher criminal background investigation program. The Department proposed its rules entitled "Criminal History Background Investigations" (20 Ill. Adm. 1270), in the November 21, 1986, issue of the Illinois Register. These rules were adopted in October 1987, and the file was closed.

Department of Conservation

The Joint Committee was monitoring a complaint lodged against the Department of Conservation in April 1986, questioning the authority of the Department to sell tree and shrub seedlings. The complainant alleged that tax-supported nurseries should not be allowed to expand, but rather, the State should allow private nurseries to supply products for government programs as well as for

private demands. The Department proposed amendments to its rules entitled "Sale of Tree and Shrub Seedlings" (17 Ill. Adm. Code 1540) in the August 29, 1986, issue of the Illinois Register. The Committee considered the amendments at its November 19, 1986, meeting and voted one objection and one recommendation to the rule. In relation to this complaint, the Joint Committee suggested in its recommendation that the Department of Conservation seek legislation that would authorize it to enter into long-term contractual growing agreements with commercial nurserymen to purchase tree and shrub seedlings to be used by the Department for its program under its rule "Sale of Tree and Shrub Seedlings." This legislation was drafted by the Department and was signed into law as PA 85-150 on August 14, 1987, and the file was closed.

PUBLIC ACT REVIEW

Section 7.05(3) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1007.05) provides that the Joint Committee will maintain a review program to study the impact of legislative changes on agency rules and rulemaking. The Joint Committee fulfills this statutory obligation through its public act review program. Under this program, the Joint Committee reviews each public act filed during the year and determines whether the legislation requires agency rulemaking. Upon making this determination, the Joint Committee notifies each agency that may be required to promulgate rules and requests information regarding whether the agency has determined that rulemaking is necessary and the status of any such rulemaking. The Joint Committee then monitors the agency's progress in fulfilling the rulemaking requirement. A primary goal of the Joint Committee in this program is to ensure that the rulemaking is implemented in an expeditious manner as required by Section 8 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1985, ch. 127, par. 1008).

The Joint Committee reviewed 910 public acts that were passed during 1987 by the 85th General Assembly. As a result of this review, it was found that 196 of the public acts may require rulemaking, and letters stating that rulemaking may be required by a particular public act were sent by the Joint Committee to the appropriate State agency. Such letters were sent to a total of forty-nine State agencies. The following table summarizes the Joint Committee's findings. The table lists in alphabetical order by agency, each public act that may require new or amendatory rulemaking, the agency or agencies involved, and the agency's response to the Joint Committee's letter regarding the need for rulemaking to implement the public act. Agencies are listed as agreeing or disagreeing that rulemaking is necessary for each particular public act. An agency listing of "no response" does not indicate that an agency does not intend to respond but rather that the agency's response has not been received before publication of this annual report.

TABLE 11
PUBLIC ACTS THAT MAY REQUIRE RULEMAKING

Public Act	Agency	Response
85-775	Aging	Agree
85-165	Agriculture	Agree
85-171	Agriculture	Agree
85-177	Agriculture	Agree
85-246	Agriculture	Agree
85-324	Agriculture	Agree
85-436	Agriculture	Agree
85-483	Agriculture	Agree
85-717	Agriculture	Agree
85-856	Agriculture	Agree
85-677	Alcoholism & Substance Abuse	Agree
85-679	Alcoholism & Substance Abuse	Agree
85-551	Attorney General	Agree
85-729	Board of Governors	No Response
85-729	Board of Regents	Agree
85-443	Capital Development Board	Agree
85-144	Carnival-Amusement Safety Board	Agree
85-129	Central Management Services	Agree
85-315	Central Management Services	Agree
85-430	Central Management Services	Agree
85-432	Central Management Services	No Response
85-554	Central Management Services	Agree
85-848	Central Management Services	No Response
85-126	Children & Family Services	Disagree
85-198	Children & Family Services	Disagree
85-205	Children & Family Services	Agree
85-208	Children & Family Services	Agree
85-216	Children & Family Services	Agree
85-344	Children & Family Services	Agree
85-543	Children & Family Services	Agree
85-566	Children & Family Services	Agree
85-666	Children & Family Services	Agree
85-738	Children & Family Services	Agree
85-122	Commerce & Comm. Affairs	Agree
85-138	Commerce & Comm. Affairs	Agree
85-162	Commerce & Comm. Affairs	Agree
85-180	Commerce & Comm. Affairs	Agree
85-288	Commerce & Comm. Affairs	Agree
85-545	Commerce & Comm. Affairs	Agree
85-552	Commerce & Comm. Affairs	Disagree
85-870	Commerce & Comm. Affairs	Disagree
85-6	Commerce Commission	No Response
85-19	Commerce Commission	Agree
85-122	Commerce Commission	Agree
85-553	Commerce Commission	No Response
85-709	Commerce Commission	No Response
85-809	Commerce Commission	No Response
85-882	Commerce Commission	No Response
85-10	Commissioner of Banks & Trusts	Disagree
85-203	Commissioner of Banks & Trusts	Disagree
85-212	Commissioner of Banks & Trusts	Agree

TABLE 11
PUBLIC ACTS THAT MAY REQUIRE RULEMAKING
(continued)

Public Act	Agency	Response
85-298	Commissioner of Banks & Trusts	Agree
85-858	Commissioner of Banks & Trusts	Agree
85-313	Commissioner of Savings & Loans	Agree
85-335	Commissioner of Savings & Loans	Agree
85-579	Commissioner of Savings & Loans	Disagree
85-735	Commissioner of Savings & Loans	Agree
85-852	Commissioner of Savings & Loans	Disagree
85-789	Comptroller	No Response
85-127	Conservation	Agree
85-149	Conservation	Agree
85-150	Conservation	Agree
85-151	Conservation	Agree
85-152	Conservation	Disagree
85-183	Conservation	Agree
85-287	Conservation	Disagree
85-294	Conservation	Agree
85-640	Conservation	Agree
85-699	Conservation	No Response
85-856	Conservation	Agree
85-905	Conservation	No Response
85-727	Consortium for Educ. Opportunity	Agree
85-164	Corrections	Agree
85-306	Corrections	Disagree
85-653	Crimminal Justice Inform. Auth.	No Response
85-905	Development Finance Auth.	No Response
85-266	Emergency Services & Disaster Agency	No Response
85-456	Emergency Services & Disaster Agency	No Response
85-613	Emergency Services & Disaster Agency	No Response
85-292	Energy & Natural Resources	Agree
85-288	Environmental Protection Agency	No Response
85-863	Environmental Protection Agency	No Response
85-400	Experimental Organ Transplant. Proc. Bd.	No Response
85-249	Financial Institutions	No Response
85-265	Financial Institutions	No Response
85-426	Financial Institutions	No Response
85-427	Financial Institutions	No Response
85-446	Financial Institutions	No Response
85-143	Fire Marshal	Agree
85-861	Fire Marshal	Agree
85-224	Historic Preservation Agency	Agree
85-536	Human Rights	No Response
85-825	Human Rights	No Response
85-20	Insurance	Agree
85-131	Insurance	Disagree
85-329	Insurance	Disagree
85-702	Insurance	Disagree
85-799	Insurance	Agree

TABLE 11
PUBLIC ACTS THAT MAY REQUIRE RULEMAKING
(continued)

Public Act	Agency	Response
85-856	Labor	No Response
85-895	Local Govtl. Law Enf. Ofcr. Trng. Bd.	Agree
85-183	Lottery	No Response
85-308	Mental Health & Dev. Disabilities	Agree
85-336	Mental Health & Dev. Disabilities	Agree
85-557	Mental Health & Dev. Disabilities	Agree
85-721	Mental Health & Dev. Disabilities	Disagree
85-816	Mental Health & Dev. Disabilities	Agree
85-874	Mental Health & Dev. Disabilities	Agree
85-445	Nuclear Safety	Agree
85-700	Nuclear Safety	Agree
85-844	Nuclear Safety	Agree
85-402	Pollution Control Board	Agree
85-752	Pollution Control Board	Agree
85-861	Pollution Control Board	No Response
85-401	Prairie State 2000 Authority	Agree
85-255	Prisoner Review Board	Disagree
85-548	Prisoner Review Board	No Response
85-112	Public Aid	Agree
85-114	Public Aid	Agree
85-115	Public Aid	Agree
85-195	Public Aid	Agree
85-286	Public Aid	Agree
85-453	Public Aid	Agree
85-712	Public Aid	Agree
85-766	Public Aid	Disagree
85-790	Public Aid	Agree
85-824	Public Aid	Agree
85-135	Public Health	No Response
85-232	Public Health	No Response
85-279	Public Health	No Response
85-351	Public Health	No Response
85-400	Public Health	No Response
85-503	Public Health	No Response
85-575	Public Health	No Response
85-610	Public Health	No Response
85-677	Public Health	No Response
85-679	Public Health	No Response
85-682	Public Health	No Response
85-785	Public Health	No Response
85-831	Public Health	No Response
85-847	Public Health	No Response
85-890	Public Health	No Response
85-898	Public Health	No Response
85-4	Registration & Education	Agree
85-225	Registration & Education	Agree

TABLE 11
PUBLIC ACTS THAT MAY REQUIRE RULEMAKING
(continued)

Public Act	Agency	Response
85-269	Registration & Education	Agree
85-342	Registration & Education	Disagree
85-686	Registration & Education	Agree
85-894	Registration & Education	Agree
85-896	Registration & Education	Agree
85-200	Rehabilitation Services	Agree
85-604	Rehabilitation Services	Agree
85-118	Revenue	Agree
85-166	Revenue	Agree
85-295	Revenue	Agree
85-299	Revenue	Agree
85-340	Revenue	Agree
85-415	Revenue	Agree
85-444	Revenue	Agree
85-650	Revenue	Agree
85-663	Revenue	Agree
85-731	Revenue	Agree
85-796	Revenue	Agree
85-885	Revenue	Agree
85-886	Revenue	Agree
85-121	Scholarship Commission	Agree
85-778	Scholarship Commission	Agree
85-875	Scholarship Commission	Agree
85-172	Secretary of State	Agree
85-354	Secretary of State	Disagree
85-630	Secretary of State	Agree
85-729	Southern Ill. Univ. Bd. of Trustees	Agree
85-248	State Board of Education	Agree
85-282	State Board of Education	Disagree
85-322	State Board of Education	Agree
85-359	State Board of Education	Disagree
85-361	State Board of Education	Disagree
85-369	State Board of Education	Disagree
85-389	State Board of Education	Disagree
85-410	State Board of Education	Agree
85-416	State Board of Education	Agree
85-423	State Board of Education	Agree
85-433	State Board of Education	Agree
85-529	State Board of Education	Agree
85-582	State Board of Education	Disagree
85-618	State Board of Education	Agree
85-629	State Board of Education	Agree
85-680	State Board of Education	Agree
85-693	State Board of Education	Agree
85-758	State Board of Education	Disagree
85-759	State Board of Education	Agree
85-781	State Board of Education	Disagree
85-871	State Board of Education	Agree
85-880	State Board of Education	Agree

TABLE 11
PUBLIC ACTS THAT MAY REQUIRE RULEMAKING
(continued)

Public Act	Agency	Response
85-781	State Police	No Response
85-900	State Police	No Response
85-183	Transportation	Disagree
85-484	Transportation	Disagree
85-547	Transportation	Agree
85-560	Transportation	Disagree
85-905	Transportation	No Response
85-729	Univ. Of Illinois Bd. of Trustees	Agree
85-169	Veterans' Affairs	Agree
85-170	Veterans' Affairs	Agree
85-792	Veterans' Affairs	Agree

1987 LEGISLATIVE ACTIVITY

The passage of legislation that clarifies, as well as upholds, the intent of the General Assembly is a priority of the Joint Committee. The Joint Committee successfully introduced nine public acts during 1987, each reflecting issues addressed by the Joint Committee throughout the past twelve months.

The issues contained in the following public acts were brought to the attention of the full Committee after a special subcommittee reviewed all of the recommendations for legislation in order to establish the priority of the issues to be handled. The Joint Committee also sponsors legislation to amend the Illinois Administrative Procedure Act to improve the oversight process for State agencies in Illinois.

The following is a review of the Joint Committee's 1987 legislative package. Also included is a summary of Public Acts 85-317, 85-367, 85-340, 85-451, and 85-587, which were not sponsored by the Joint Committee, but amend the Illinois Administrative Procedure Act and, therefore, warrant mention in this report.

Public Act 85-122. Public Act 85-122 (Senate Bill 487, sponsored by Senators Karpiel and Hall and Representatives Flinn and Ryder), effective July 30, 1987, amends the Public Utilities Act and the Energy Assistance Act. Specifically, Public Act 85-122 amends Section 9-227 of the Public Utilities Act to prohibit the Illinois Commerce Commission from presuming that any particular portion of an otherwise reasonable charitable contribution is unreasonable and not allowable as an operating expense, and amends Section 10-101 of the Act to specify that attorneys licensed to practice in another state, but not licensed to practice in Illinois, may appear in a representative capacity before the Commission, provided that the visiting attorney's state of residence allows Illinois attorneys to practice before its Commerce Commission or equivalent body on a reciprocal basis. In addition, Public Act 85-122 amends Section 4 of the Energy Assistance Act to authorize the Commission to charge less than 12% of an Illinois Residential Affordable Payment Program (IRAPP) participant's income when the participant is served by one non-regulated utility; to eliminate the requirement that IRAPP participants submit proof of continuing eligibility every six months, instead requiring recertification of eligibility on a yearly basis; to clarify other IRAPP requirements; and to provide that energy assistance funds shall not include cooling assistance funds.

Public Act 85-244. Public Act 85-244 (Senate Bill 489, sponsored by Senators Woodyard and O'Daniel and Representatives McCracken and Hicks), effective September 2, 1987, resolves statutory authority issues concerning the Board of Higher Education and the Board of Trustees of the University of Illinois that were discovered during the Joint Committee's review of rules.

Specifically Public Act 85-244:

1. Adds new Sections 5 and 6 to the Health Services Education Grants Act to give the Board of Higher Education the authority to require enrollment audits of grantee institutions and to promulgate rules

implementing this Act, and amends Section 4 of the Act to clarify the criteria used by the Board in determining the qualifications for different types of grants issued under this Act;

2. Amends Section 7 of "An Act to provide for the organization and maintenance of the University of Illinois" to authorize the Board of Trustees of the University of Illinois to adopt all administrative rules that may be necessary for effective regulation by the Board of Trustees;
3. Amends Section 1 of "An Act enabling the University of Illinois to qualify for Federal funds and aid in relation to the administration of the Division of Services for Crippled Children" to provide that the University Board of Trustees shall have a charge upon all claims, demands, and causes of action for injuries to an applicant for or recipient of financial aid from the Division;
4. Adds new Section 9.17 to "An Act creating a Board of Higher Education defining its powers and duties, making an appropriation therefor, and repealing an Act herein named" to provide that the Board may audit or may require the audit of all grant funds annually;
5. Amends Section 4 of the Higher Education Cooperation Act to provide the Board of Higher Education with general audit authority for all grant programs under the Board's administration and adds Section 6, which authorizes the Board to adopt rules that it deems necessary, to the Act.

Public Act 85-245. Public Act 85-245 (Senate Bill 490, sponsored by Senators Woodyard and O'Daniel and Representatives McCracken and Hicks), effective September 2, 1987, amends Section 2-12 of the Public Community College Act to expressly authorize the Illinois Community College Board to approve locally funded capital projects for which no State funding is requested.

Public Act 85-277. Public Act 85-277 (Senate Bill 539, sponsored by Senators O'Daniel and Karpiel and Representatives Hicks and Ryder), effective September 5, 1987, amends Section 3-104 of the Illinois Vehicle Code. This public act provides that an application for title of a vehicle not manufactured in accordance with federal safety and emission standards must be accompanied by all documents required by federal governmental agencies to meet their standards before a vehicle is allowed to be issued title and registration in Illinois.

Public Act 85-325. Public Act 85-325 (Senate Bill 601, sponsored by Senator Donahue and Representatives Levin and Olson, M.), effective September 10, 1987, amends Section 2-10 of the Carnival and Amusement Rides Safety Act. This public act authorizes the Department of Labor to accept permit and inspection fees for amusement rides and amusement attractions by mail rather than having inspectors collect such fees at the time of inspection.

Public Act 85-394. Public Act 85-394 (Senate Bill 602, sponsored by Senator Donahue and Representatives Ryder and Levin), effective September 14, 1987, amends Section 5-5.4 and adds Section 5-5.17 to the Illinois Public Aid Code and amends Section 3-4 of the Health Finance Reform Act. Specifically,

Public Act 85-394 authorizes the Department of Public Aid: (1) to pay for developmental training services provided to its mentally disabled clients who reside in long term care facilities as a separate component of long term care facility rates and to require that long term care facilities pass this reimbursement on to the developmental training providers; (2) to impose a penalty on long term care facilities that do not pass through funds for developmental training services within three days; (3) to require submission of cost reports by developmental training providers who contract with long term care facilities; and (4) to allow the Department of Public Aid to require hospitals to accede to enforcement of a pledge of confidentiality through the issuance of a preliminary or permanent injunction or other court order and to limit the forms of recordkeeping during negotiations to handwritten notes.

Public Act 85-416. Public Act 85-416 (House Bill 1244, sponsored by Representatives Levin and McCracken and Senator Jones), effective September 15, 1987, amends Sections 2-3.61, 2-3.62, 2-3.68, 14-8.02, 2-1b, and 29-5 of the School Code. Specifically, Public Act 85-416 requires the State Board of Education to prescribe a system for evaluating summer school programs for gifted and remedial students; to establish standards governing Educational Service Centers; and to provide standards in its rules for assessing vocational instructor practicum candidates. In addition, Public Act 85-416 provides that final decisions of Level II hearing officers shall occur no more than thirty days after receipt of a notice of appeal, unless an extension of time is granted by the officer upon request of either party; authorizes the imposition of a \$20 fee for each application of endorsement of an existing teacher certificate; authorizes the Board to designate municipal retirement payments as reimbursable direct costs for supervisory personnel; and deletes provisions designating all transportation-related building and building-maintenance costs as reimbursable indirect costs.

Public Act 85-700. Public Act 85-700 (Senate Bill 492, sponsored by Senators Hall and Karpiel and Representatives Hicks and McCracken), effective September 22, 1987, amends Sections 4.1, 6, 6b, and 8.2 of the Radiation Protection Act. Specifically, this public act requires the Department of Nuclear Safety, (1) to establish standards for the training or experience the Department will require of a physician before approving a license for human use of sealed radiation sources; (2) to provide standards relating to the financial surety arrangements required for license approval, issuance of licenses for activities that adversely affect the environment, removal of radiation contamination by licensees, a product's degree of utility and probability of uncontrolled disposal and dispersal, emergency situations involving waiver of notice requirements for out-of-state licensees, and the injection of radioactive material into potable aquifers; and (3) to prescribe standards regarding addition or dismissal of parties and addition or modification of allegations in administrative hearings. Public Act 85-700 also authorizes the Department to impose fees in relation to certain licenses.

Public Act 85-792. Public Act 85-792 (House Bill 1370, sponsored by Representatives Hicks and Olson, M. and Senators Hall and Woodyard), effective September 24, 1987, amends Section 6(d) of the Vietnam Veterans' Act. This public act authorizes the Director of the Department of Veterans' Affairs to require quarterly reports of programmatic and financial activities

from the directors of multipurpose service centers operated by community, non-profit agencies or organizations for the purpose of providing job counseling and placement services to veterans.

Public Acts 85-317 and 85-367. Public Act 85-317 (Senate Bill 379, sponsored by Senators Jacobs and Donahue and Representative Wojcik), effective September 10, 1987, and Public Act 85-367 (House Bill 577, sponsored by Representative Wojcik and Senator Jacobs), effective September 11, 1987, are identical public acts amending Section 9 of the Illinois Administrative Procedure Act. These public acts permit State agencies to issue declaratory rulings stating whether compliance with a federal rule will satisfy the purposes and provisions of the state agency's similar, applicable rule. If the agency determines that compliance with the federal rules would satisfy the purposes and relevant provisions of the state law involved but that it would not satisfy the state rule, the agency shall notify the Joint Committee. Also, the agency may initiate rulemaking to revise the state rule so that compliance with the federal rule is acceptable as compliance with the state rule.

Public Act 85-340. Public Act 85-340 (Senate Bill 1230, sponsored by Senators Woodyard and Philip and Representative Frederick), effective September 10, 1987, amends Section 6.02(a) of the Illinois Administrative Procedure Act, (IAPA) to allow the Department of Revenue to incorporate by reference federal statutes and regulations into the income tax regulations without identifying the incorporated matter by date and without including a statement that the incorporation does not include later amendments. House Bill 1243, which was part of the Joint Committee's 1987 legislative package, contained the same provision amending Section 6.01(a) of the IAPA that is found in Public Act 85-340. The language of House Bill 1243 was incorporated into House Bill 1168; however, H.B. 1168 was amendatorily vetoed to delete the language regarding incorporation by reference.

Public Act 85-451. Public Act 85-451 (House Bill 272, sponsored by Representative Levin and Senator Netsch), effective September 17, 1987, amends Section 5.02 of the Illinois Administrative Procedure Act, (IAPA) to exempt deletions from or additions to the Department of Public Health's generic drug formulary from the IAPA's two-year limit on promulgation of duplicate emergency rules.

Public Act 85-587. Public Act 85-587 (House Bill 181, sponsored by Representative Mautino and Senator McNamara), effective January 1, 1988, amends Section 3.10 of the Illinois Administrative Procedure Act (IAPA), to include in the definition of "small business," corporations organized under the "General Not For Profit Corporation Act of 1986." Public Act 85-587 also amends Section 14.1(a) of the IAPA, concerning contested cases, to provide that a claimant may not recover litigation expenses when the parties have executed a settlement agreement which, while not stipulating liability or violation, requires the claimant to take corrective action or pay a sum of money, and to specify when the Court of Claims may reduce the amount of the litigation expenses to be awarded under this Section, or may deny an award.

PUBLICATIONS OF THE JOINT COMMITTEE

In an attempt to aid state agencies in promulgating rules, and members of the general public in understanding rules and the rulemaking process, the Joint Committee offers the following publications:

Illinois Regulation, the Joint Committee's weekly publication summarizing the regulatory changes of State agencies, is currently distributed to all members of the General Assembly, State agency rules coordinators, lobbyists, and approximately 500 businesses, chambers of commerce, libraries, government agencies, law firms, and other interested individuals and entities. The publication summarizes proposed and adopted rules according to subject area. Illinois Regulation is the result of the Regulatory Flexibility Law which became effective in 1982 and which required agencies to provide some flexibility in rules imposing a burden upon small businesses. In order to implement this law, small businesses are encouraged to raise issues and to suggest alternatives to rulemakings proposed by State agencies. The publication has been expanded to provide information regarding agency rulemakings to a broader spectrum of entities and individuals, and is directed towards the individuals being regulated, rather than the regulating entities.

In addition to Illinois Regulation, the Joint Committee has published a revised Guide to the Illinois Administrative Procedure Act. The Guide provides a clear section-by-section explanation of the Act to participants and potential participants in the rulemaking process. The Joint Committee is confident that the Guide will increase participants' awareness of the process, and, therefore, increase their ability to influence the substance of rules through increased levels of public participation in the rulemaking process.

In addition to the revision of existing publications, the Joint Committee has developed a new research tool. The Joint Committee has compiled the text of every objection and recommendation it has issued since the Committee's inception in 1978 into a set of volumes. A comprehensive set of indices to the volumes were developed so that objections and recommendations can be located by agency or by Administrative Code citation. The actions were also classified by type so that all objections or recommendations issued on a particular basis (e.g. lack of statutory authority) can be located. The index system has contributed significantly to the ability of the Joint Committee to give precedential value to past objections and recommendations.

The publications and other materials prepared by the Joint Committee during 1987 demonstrate the Committee's commitment to ensuring that the affected public is aware of State regulatory activities, and that State agencies fully consider the ramifications of such activities prior to implementation.

COURT DECISIONS AND ATTORNEY
GENERAL OPINIONS

Section 7.05 of the Illinois Administrative Procedure Act requires that the Joint Committee study the impact of court rulings and administrative actions on agency rules and rulemaking. In order to carry out this responsibility, the Joint Committee reviews court decisions and Attorney General opinions, and monitors pending litigation which may affect administrative rulemaking. Several noteworthy decisions and opinions involving interpretations of the Illinois Administrative Procedure Act were issued recently. The following is a brief summary of those decisions and opinions.

In Commonwealth Edison Company v. Illinois Commerce Commission v. Illinois Cable Television Association, No. 85CH 3743 (1986), the Circuit Court of Cook County held that a change in the Illinois Commerce Commission's rules to increase the Illinois rate structure for cable television operation pole attachment agreements from 25% to 66.6% was a substantive change, and, therefore, cannot arise after commencement of the Second Notice Period, unless initiated by the Joint Committee on Administrative Rules (JCAR). It was further held that a mere "suggestion" by some of the members of JCAR that is not published in the Illinois Register does not constitute a change initiated by JCAR.

In Citizens For a Better Environment and the People of the State of Illinois v. Illinois Pollution Control Board, 152 Ill.App.3d 105, 105 Ill.Dec. 297, 504 N.E.2d 166 (1st Dist, 1987), the First District Appellate Court held that the Pollution Control Board lacked the authority to adopt emergency rules to implement Section 39(h) of the Environmental Protection Act because no "emergency" existed. Section 39(h), enacted in 1981, but not effective until January 1, 1987, prohibits the deposit of hazardous waste streams in a permitted hazardous waste site unless the waste generators and site owners and operators obtain specific authorization from the Environmental Protection Agency. The Court stated, ". . . the need to adopt emergency rules in order to alleviate an administrative need, which, by itself, does not threaten the public interest, safety, or welfare does not constitute an 'emergency'." The court reasoned that the Board's emergency rules had been promulgated due to a self-created administrative problem since the legislation was enacted in 1981, and consequently the Board had been given more than enough time to promulgate rules through the regular rulemaking process prior to the statute's January 1, 1987 effective date.

In Donelly v. Edgar, 117 Ill.2d 59, 109 Ill.Dec. 176, 509 N.E.2d 1015 (Ill. 1987), Donelly, whose driver's license was suspended upon his conviction of driving under the influence of alcohol, sought relief from the administrative order of the Secretary of State denying his petition for a restricted driving permit. Donelly contended that the Secretary's decision was void because the procedures followed by the Secretary failed to comply with the requirements of Section 13 of the Illinois Administrative Procedure Act (IAPA). Section 13 of the IAPA states that if a majority of the agency officials who make a final decision in a contested case have not heard the case or read the record, and the decision is against a party other than the agency, a "proposal for decision" must be served upon the parties involved. The court stated that Section 13 does not apply to the Secretary's hearing procedures in Section 2.4 of the Secretary's rules. The court reasoned that the "plain language" of

Section 13 dictates an application of this section "only to situations where the majority of the officials of an agency who are to render the final decision have not heard the case or read the record. In the present case, there is only one agency official who is to render the final decision in each case, and that official is the Secretary." Donelly further argued that Section 2.4 of the Secretary's internal policy procedures, which establishes a formal hearing review panel to review hearing officers' proposed decisions, constitutes a rule within the meaning of the IAPA, and as such, was never properly promulgated. The court held that Section 2.4 is not a rule for the purposes of the IAPA since it concerns only the internal management of the agency and does not affect the private rights or procedures available to persons or entities outside the agency.

In Wynn v. Coler, 111 Ill.Dec. 525, 512 N.E.2d 1066 (4th Dist. 1987), the claimant sought administrative review following the termination of her Aid to Families With Dependent Children (AFDC) benefits and denial of her request for renewed benefits. The claimant alleged that the Department of Public Aid relied on an amendment to its policy manual that was never properly promulgated pursuant to the Illinois Administrative Procedure Act. However, the court found that the policy manual itself had never been properly promulgated by the Department. Therefore, the court held that the policy manual was not a rule and that the only properly promulgated rules relative to treatment of lump-sum payments for the purposes of AFDC eligibility at the time of the termination of the claimant's benefits provided that all income was to be considered in determining eligibility for AFDC benefits, and that the claimant, who received lump-sum social security benefits, was ineligible for renewed AFDC benefits for the specified period of time.

In Com-Co Insurance Agency, Inc. v. West Bend Mutual Insurance Company, 666 F.Supp. 1126 (N.D.Ill. 1987), a breach of contract action arose out of the termination of an agency agreement between the plaintiff (Com-Co) and the defendant (West Bend). Com-Co alleged wrongful appropriation of and interference with expirations of insurance policies placed by Com-Co with West Bend. West Bend defended its actions by asserting Section 141.01 of the Illinois Insurance Code and a letter of interpretation of Section 141.01 written by the Department of Insurance. The court held that the interpretive letter was not a validly promulgated rule absent evidence that procedures for adopting rules as outlined in the Administrative Procedure Act were followed, and, therefore, the interpretive letter could serve only as persuasive evidence.

On March 16, 1987, the Attorney General of the State of Illinois issued an opinion interpreting Sections 6, 7, and 10 of the Illinois Police Training Act (Act). The Attorney General stated that the Illinois Local Governmental Law Enforcement Officers Training Board (Board) possesses an implied power "to prescribe and enforce reasonable minimum physical fitness standards for probationary police officers seeking entrance to the Board-approved basic training course, and that prospective trainees who fail to meet such standards may be excluded from training." It was reasoned that this implied power is derived from the Board's express powers (enumerated in Sections 6, 7, and 10 of the Act), to supervise the training of police officers.

APPENDIX A
HISTORY OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES
AND THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

By the mid-1970's Illinois had 65 major agencies and nearly 250 smaller boards and commissions. The courts had ruled that administrative rules have the effect of law, and decisions rendered by those bodies conceivably affected the lives of more Illinois citizens than any other in government. Yet, observers of the scene found that organization among these agencies was complex, duplicative and chaotic. Indeed, at the time, no single source could produce a complete organization chart or even a listing of all Illinois agencies, boards and commissions. The goals of good government had been clear for generations. Government is accountable to the people for the effective, efficient and economic delivery of services. Toward this end, the federal government had enacted the federal Administrative Procedure Act in the 1940's, and in September 1975, the Governor signed Public Act 79-1083, effective September 22, 1975, creating the Illinois Administrative Procedure Act.

The Illinois Administrative Procedure Act established four categories of administrative proceedings: rules, contested cases, licenses and rate-making. The Governor's message accompanying the signing of the Act pointed out that this legislation formalized some common procedures, such as public hearings on proposed rules. The message also called the public petition procedures innovative and endorsed the establishment of rulemaking requirements. However, it soon became apparent that the establishment of rulemaking requirements would conflict with Section 2 of the Act which exempted agencies from compliance with any part of the Act except as expressly stated in the law which created or conferred power upon that agency.

In 1977, Section 2 was amended by Public Act 80-1035 (House Bill 14, effective September 27, 1977) to make the Act applicable to every agency, except as specified. Agencies have continued to claim an exemption because they are not an "agency," as defined in the Act, or to excuse lack of rules for on-going programs because legislation creating the program failed to specify that rulemaking was required. Most agencies, however, have cooperated in the rulemaking process. This has been particularly true since Illinois regulations were codified by the Office of the Secretary of State in January 1985. As a result, rulemaking is now more widely understood by both professionals and the affected public.

Public Act 80-1035 also created the Joint Committee on Administrative Rules in 1977. The function of the Joint Committee under the amended Administrative Procedure Act can be broadly stated as an on-going review and comment function in relation to newly proposed rules, investigation and resolution of complaints arising from rulemaking, and review of new public acts that may require rulemaking. For too long, said the first Chairman of the Joint Committee, Representative Harry Yourell, the legislature had been content to pass legislation without systematically ensuring that agencies charged with the task of implementing that legislation were properly interpreting and complying with the intent of the legislation. In addition to making the Act's rulemaking and hearing provisions applicable to all state agencies and the creation of the Joint Committee on Administrative Rules, Public Act 80-1035 made several other changes in the Act, including creation of the Illinois Register, a weekly

publication of the Secretary of State which informs the public of all rulemaking activity by State agencies.

The minutes of the monthly meetings during the first year show that the Joint Committee dealt with issues commonly facing a new organization, such as staffing and office space, as well as substantive issues about rulemaking and interpretations of the Illinois Administrative Procedure Act. For example, within the first few months, the Joint Committee had reviewed its powers and duties and, based on the separation of powers clause in the 1970 Illinois Constitution, found them to be advisory only. The Joint Committee sent guidelines to all State agencies to assist them in complying with provisions of the Act and prepared an amendment to clarify that all boards of State institutions of higher education were affected by the Act. By the third meeting in January 1978, the Joint Committee was reviewing proposed rules published in the Illinois Register. Objections were issued to several of the rules. At this time, all negotiations between the Joint Committee and a rulemaking agency took place at the monthly meeting, a practice that on occasion resulted in very long meetings. The question of court-ordered rule changes was first considered by the Joint Committee in February 1978. A court had ordered an amendment to the Illinois Department of Public Aid's rule on physician services for medically necessary abortions for a public aid recipient. Legislation was drafted and presented at the March 23, 1978 meeting to establish a new category of rulemaking for rules required by court order or federal rules and regulations ("peremptory" rulemaking). But it was not until a year and a half later that the Act was amended by Public Act 81-1044 (effective October 1, 1979) to authorize this category of rulemaking.

By March 1978, the Joint Committee had established July 1, 1980, as the deadline for agencies to prepare and submit a compilation of all their rules. In addition, legislation was drafted to require that rules contain specific standards and criteria to permit the affected public to understand the basis on which agency discretion was to be used. This standards and criteria amendment did not become effective until July 1, 1980 (Public Act 81-1129). In March 1978, the Joint Committee also discussed amending the Illinois Administrative Procedure Act to place the burden of proof upon agencies asserting the validity of contested rules in court cases involving rules which have been objected to by the Joint Committee, whenever such agencies have refused to remedy Joint Committee objections. This concept has yet to be enacted.

By the end of its first full year, the Joint Committee had reviewed nearly 500 rulemakings and prepared a legislative package that contained 23 recommended bills. In its second year of operation, 1979, the Joint Committee examined over 525 rulemakings, issued 65 statements of objection and implemented the five-year rules review program. Agency rulemaking increased in 1980 during which time the Joint Committee reviewed nearly 700 proposed, emergency and peremptory rulemakings and completed 9 detailed reviews of 28 sets of existing rules. Agency rulemaking has generally continued to increase during the ten years that the Joint Committee has compiled data. The tables show a comparison of general, emergency, and peremptory rulemaking from 1979 (1980 for emergency and peremptory) through 1987 and illustrate the rulemaking activity of State agencies during that time.

The Illinois Administrative Procedure Act has been continually evolving since 1977. In addition to the creation of the Joint Committee on Administrative Rules as an oversight body, which became a Legislative Support Services Agency in 1984, the Act has been amended to deal with numerous problems which have arisen. One of the most significant has been the implementation of the small business and small municipality flexibility requirements imposed pursuant to Sections 3.10, 4.03, 5.01, and 7.06 of the Act. These Sections require agencies to consider the impact of rules upon small businesses and small municipalities and, if feasible, suggest alternatives to those rules. Several other legislative changes have been made in the Act to remedy specific problems. Public Act 84-469, effective January 1, 1986, provides that pay rates established pursuant to the Personnel Code can be amended using the peremptory rulemaking process within 30 days after such amendment is necessary due to a conflict between the rates and the terms of a collective bargaining agreement. Public Act 84-576, also effective January 1, 1986, prohibits agencies from using the peremptory rulemaking process to implement consent orders or other negotiated settlements. The Act also provides that emergency rulemaking may be used in these instances. Public Act 84-1329, effective September 9, 1986, permits the second notice period to be extended upon the mutual agreement of the Joint Committee and the agency. Two new sections have been added to the Act. Section 5.04, effective January 1, 1985, provides that, under certain conditions, a rule can be automatically repealed, and Section 5a, effective July 1, 1986, provides for the publication of a regulatory agenda.

Several amendments to the Illinois Administrative Procedure Act were passed by the General Assembly this year. Public Act 85-317, effective September 10, 1987, and Public Act 85-367, effective September 11, 1987, are identical. These acts amend the Illinois Administrative Procedure Act to permit a state agency to issue declaratory rulings concerning whether compliance with a federal rule will satisfy the purposes and provisions of the state agency's similar, applicable rule. Public Act 85-340, effective September 10, 1987, allows the Department of Revenue to incorporate federal rules or regulations by reference without identifying the incorporated matter by date and without including a statement that the incorporation does not include later amendments, in circumstances where the Department is promulgating rules imposing taxes on or measured by income. Public Act 85-451, effective September 17, 1987, extends the exemption from the limitation on the number of emergency rules which may be adopted in a 24 month period to include emergency rules that make additions to and deletions from the generic drug formulary pursuant to Section 3.14 of the Illinois Food, Drug and Cosmetic Act. Public Act 85-587, effective January 1, 1988, amends the definition of "small business" to include a corporation organized under the General Not for Profit Corporation Act of 1986. Thus, the Act will continue to evolve as problems concerning administrative rulemaking arise.

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1978 THROUGH 1987

<u>AGENCY</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
Abandoned Mined Lands Reclamation Council	-	-	-	-	-	-	-	-	-	-
Administrative Rules, Joint Committee on	3	5	1	1	1	1	1	1	5	2
Administrative Services, Department of	1	-	7	7	1	-	-	-	-	-
Aggregate Mining Problems Study Commission	-	-	-	1	-	-	-	-	-	-
Aging, Department on	5	1	6	6	4	4	6	3	2	1
Agriculture, Department of	14	17	14	16	24	18	41	15	11	26
Alcoholism and Substance Abuse, Department of	(2)	-	-	-	-	3	2	5	6	3
Attorney General	3	1	2	-	-	3	2	3	2	2
Auditor General	7	5	2	1	4	1	3	1	-	-
Banks and Trust Companies, Commissioner of	2	5	3	-	6	-	-	-	6	3
Capital Development Board	2	1	3	-	3	-	2	9	4	6
Carnival-Amusement Safety Board	-	-	-	-	-	-	-	-	2	3
Central Management Services, Department of	-	-	-	-	3	16	18	10	14	11
Children and Family Services, Department of	2	2	60	1	26	10	23	14	22	3
Cities and Village Municipal Problems Commission	-	-	-	-	-	-	-	-	-	-
Civil Service Commission	-	-	-	-	3	-	2	-	-	-
Civil Service Merit Board, University	-	-	-	2	-	-	1	-	-	-
Civil Service System, State Universities	-	-	-	3	-	-	2	-	-	-
Commerce and Community Affairs, Department of	-	-	-	1	8	4	20	29	29	18
Commerce Commission, Illinois	-	-	-	10	21	19	43	22	20	86
Commission Review Board	-	-	-	-	-	-	-	-	1	-
Community College Board, Illinois	17	11	19	-	-	1	2	3	2	2
Comptroller	1	2	4	3	4	4	3	1	5	3
Condominium Study Commission, Joint	-	-	-	1	-	-	-	-	-	-
Conservation, Department of	76	92	75	108	33	34	36	34	33	27
Cook County Local Records Commission	-	-	-	-	-	-	-	-	1	-
Corrections, Department of	82	23	38	24	15	66	-	-	10	8
County Problems Commission	-	-	-	1	-	-	-	-	-	-
Court of Claims	-	-	-	-	-	-	-	-	1	1
Criminal Justice Information Authority, Illinois	-	1	2	-	-	-	-	-	2	-
Dangerous Drugs Advisory Council	-	-	-	-	-	-	-	-	-	-

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1978 THROUGH 1987
(continued)

AGENCY	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
Dangerous Drugs Commission (2)	-	-	-	2	3	3	2	-	-	-
Development Finance Authority	-	-	-	-	-	-	-	4	1	-
East St. Louis, Board of Trustees, of the State	-	-	-	-	2	1	-	1	2	1
Community College of	-	-	3	2	5	2	1	5	12	30
Education, Board of Higher Education, Illinois Independent Higher Education, State Board of	-	-	3	4	9	8	3	7	5	3
Educational Facilities Authority, Illinois	-	-	-	1	-	2	1	1	-	2
Educational Opportunity, Illinois Consortium For Elections, State Board of	-	-	-	-	-	-	-	-	-	1
Emergency Services and Disaster Agency	6	1	8	3	7	3	4	1	-	-
Employment Security, Department of (3)	-	-	-	2	9	7	-	-	3	3
Energy and Natural Resources, Department of Energy Resource Commission	-	-	-	-	-	2	1	3	-	2
Environmental Protection Agency	7	12	10	16	18	20	21	21	10	8
Experimental Organ Transplantation Procedures Board, Illinois	-	-	-	-	-	-	-	-	1	1
Export Development Authority	-	-	-	-	-	-	-	-	1	1
Fair Employment Practices Commission	2	3	-	-	-	-	-	-	-	-
Farm Development Authority, Illinois	-	-	-	-	-	1	1	2	1	2
Financial Institutions, Department of	1	10	8	3	3	9	4	4	2	3
Fire Marshal, Office of the State	1	2	1	1	7	3	5	3	3	5
Governor's Purchased Care Review Board	1	6	2	1	2	1	1	1	1	1
Guardianship and Advocacy Commission	-	-	2	1	2	-	-	-	-	-
Health Care Cost Containment Council, Illinois	-	-	-	-	-	-	-	-	1	3
Health Coordinating Council, Statewide	4	1	-	2	-	-	-	-	-	-
Health Facilities Authority, Illinois	5	2	-	1	-	1	-	-	9	3
Health Facilities Planning Board	-	1	-	1	5	1	1	2	-	-
Health Finance Authority	-	-	-	-	-	-	-	-	1	1
Hearing Aid Consumer Protection Board	-	-	-	-	-	3	3	-	-	-
Housing Development Authority, Illinois	-	-	-	-	-	1	-	-	1	1

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1978 THROUGH 1987
(continued)

<u>AGENCY</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
Human Rights Commission	-	-	-	1	2	2	-	-	1	-
Human Rights, Department of Illinois, Board of Trustees of the University of Industrial Commission	-	-	-	5	3	1	-	1	1	-
Insurance, Department of Investment, Illinois State Board of Labor, Department of (3)	4	1	3	2	3	1	2	7	2	-
Labor Relations Board, Illinois Educational Labor Relations Board, Illinois Local Labor Relations Board, Illinois State Law Enforcement Commission	15	14	17	13	13	4	25	9	11	9
Law Enforcement Merit Board, Department of Legislative Information System	5	6	3	1	-	1	2	-	-	-
Liquor Control Commission, Illinois Local Government Affairs, Department of Local Government Records Commission Local Government Law Enforcement Officers Training Board, Illinois Lottery, Department of (4) Medical Center Commission Mental Health and Developmental Disabilities, Department of Naval Department Mines and Minerals, Department of Mississippi River Parkway Commission Natural Resources, Institute of Nature Preserves Commission Nuclear Safety, Department of Nutrition, State Council on Personnel, Department of Pollution Control Board	-	-	2	1	1	4	1	-	2	1
	-	-	1	-	-	-	-	-	2	-
	-	-	3	-	-	-	-	-	2	-
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TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1978 THROUGH 1987
(continued)

<u>AGENCY</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
Prairie State 2000 Authority	-	-	-	-	-	-	-	-	2	-
Prisoner Review Board	-	-	-	-	-	-	-	-	-	-
Property Tax Appeal Board	(5)	-	-	-	-	-	-	-	-	-
Public Aid, Department of	46	56	47	66	40	86	67	94	82	87
Public Health, Department of	42	43	55	44	92	91	53	25	44	27
Racing Board, Illinois	10	14	19	10	22	9	7	13	14	9
Regen's, Board of	-	-	-	-	-	-	-	-	-	-
Registration and Education, Department of	11	11	22	15	16	15	26	17	10	14
Rehabilitation Services, Department of	-	-	3	1	6	23	28	13	57	45
Retirement System of Illinois, State Employees'	2	3	5	3	4	1	2	3	-	-
Retirement System of The State of Illinois, Teachers'	-	-	-	-	-	-	-	-	-	-
Retirement System, State Universities	-	-	-	-	-	-	-	-	-	-
Revenue, Department of	(4)(5)	11	16	24	45	14	11	9	7	24
Savings and Loan Associations, Commissioner of	3	4	1	7	1	1	1	2	1	3
Scholarship Commission, State	-	-	-	11	4	2	1	14	10	13
Secretary of State	15	21	12	26	14	31	20	19	8	18
Select Joint Committee on Regulatory Agency Reform	-	-	-	2	-	-	-	-	-	-
State Fair Agency	-	4	-	-	-	-	-	-	-	-
State Mandates Board of Appeals	-	-	-	-	-	1	-	-	-	-
State Police, Department of	2	-	1	-	1	2	2	1	2	1
State Police Merit Board, Department of	-	-	-	-	-	-	-	-	2	2
Transportation, Department of	13	13	13	17	5	5	10	16	23	16
Travel Control Board, Higher Education	-	1	1	1	2	-	-	1	-	-
Travel Control Board, Legislative	1	1	1	-	-	-	-	1	1	-
Treasurer	1	1	2	2	1	-	1	1	5	7
Veterans' Affairs, Department of	-	-	-	-	-	-	-	-	-	-
Visit and Examine State Institutions, Commission to	-	-	-	-	-	-	-	-	-	-
TOTAL	472	467	556	563	510	585	604	537	698	609

TABLE 12
COMPARISON OF GENERAL RULEMAKING BY AGENCY
1978 THROUGH 1987
(continued)

- (1) The Department of Personnel and the Department of Administrative Services were combined in 1982, and the name was changed to the Department of Central Management Services.
- (2) The Department of Alcoholism and Substance Abuse, once a division of the Dangerous Drug Commission, became a separate agency in 1984.
- (3) The Department of Employment Security, once a bureau within the Department of Labor, became a separate agency in 1984.
- (4) The Department of the Lottery, once a division of the Department of Revenue (Lottery Control Board), became a separate agency in 1986.
- (5) The Property Tax Appeal Board, once a division of the Department of Revenue, became a separate agency in 1985.

TABLE 13
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1980 THROUGH 1987

<u>AGENCY</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
Abandoned Mined Lands Reclamation Council	-	-	-	-	-	-	-	-
Aging, Department on	1	1	1	1	1	1	1	1
Agriculture, Department of	2	1	-	-	1	2	2	1
Alcoholism and Substance Abuse, Department of	-	-	-	-	1	1	1	-
Attorney General	3	-	1	-	-	1	1	-
Banks and Trust Companies, Commissioner of	-	-	-	-	-	-	-	-
Carnival-Amusement Safety Board	-	-	-	-	-	1	-	-
Capital Development Board	2	-	-	-	2	6	6	4
Central Management Services, Department of	-	2	4	1	-	1	1	1
Children and Family Services, Department of	-	-	-	-	-	6	5	2
Citizens Council on Children	-	-	-	-	-	1	1	-
Commerce and Community Affairs, Department of	-	-	-	-	-	5	5	3
Commerce Commission, Illinois	5	-	-	2	5	-	-	-
Commission Review Board	-	-	-	1	2	-	-	-
Community College Board, Illinois	-	-	-	-	-	-	-	-
Comptroller	1	-	-	-	1	7	2	1
Conservation, Department of	13	13	3	4	1	1	-	-
Corrections, Department of	4	2	15	-	-	-	-	-
Criminal Justice Information Authority	-	-	-	-	1	-	-	-
Dangerous Drugs Commission	1	-	-	-	-	-	-	-
Development Finance Authority	-	-	-	-	-	2	-	-
Education, Board of Higher	-	-	1	-	-	-	-	-
Education Loan Authority, Illinois Independent Higher	-	-	-	-	1	9	5	1
Education, State Board of	3	1	-	-	3	-	-	2
Elections, State Board of	-	-	-	-	-	1	2	-
Emergency Services and Disaster Agency	-	4	4	2	1	-	-	1
Employment Security, Department of	-	-	1	-	-	3	2	3
Environmental Protection Agency	-	3	2	-	-	2	2	-
Experimental Organ Transplantation	-	-	-	-	-	-	-	-
Procedures Board, Illinois	-	-	-	-	1	-	1	-
Export Development Authority, Illinois	-	-	-	-	-	-	-	-

TABLE 13
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1980 THROUGH 1987
(continued)

<u>AGENCY</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
Farm Development Authority, Illinois	-	1	1	1	2	3	1	1
Financial Institutions, Department of	2	2	-	-	1	1	1	1
Fire Marshal, Office of the State	1	-	2	1	2	2	-	-
Governor's Purchased Care Review Board	1	-	-	-	-	-	-	-
Health Coordinating Council, Statewide	1	1	-	-	-	-	-	-
Housing Development Authority, Illinois	-	-	-	1	1	-	1	-
Human Rights, Department of	1	-	-	-	-	-	-	-
Illinois, Board of Trustees of the University of	-	1	1	1	2	2	2	2
Industrial Commission	1	1	2	3	2	2	1	5
Insurance, Department of	4	2	2	3	3	3	2	-
Labor, Department of (3)	1	3	-	-	-	4	1	-
Labor Relations Board, Illinois Educational	-	-	-	-	-	4	1	-
Labor Relations Board, Illinois Local	-	-	-	-	-	4	1	-
Labor Relations Board, Illinois State	-	-	-	-	-	4	1	-
Law Enforcement Merit Board, Department of	1	-	-	1	1	2	-	-
Legislative Information System	1	-	-	-	-	-	-	-
Local Governmental Law Enforcement Officers Training	-	-	-	1	1	-	-	-
Lottery, Department of	-	-	-	-	-	-	-	-
Mental Health and Developmental Disabilities, Department of	-	1	2	1	-	-	-	-
Mines and Minerals, Department of	1	1	3	1	-	-	-	-
Nuclear Safety, Department of (2)	-	-	1	2	1	1	1	-
Personnel, Department of	4	5	3	1	1	3	3	2
Pollution Control Board	1	3	-	-	-	-	2	-
Prairie State 2000 Authority	-	-	4	2	4	2	6	18
Public Aid, Department of	4	2	15	1	15	2	3	1
Public Health, Department of	11	1	2	2	2	1	2	-
Racing Board, Illinois	2	2	-	-	-	1	-	-
Regents, Board of	1	1	5	2	5	6	1	3
Registration and Education, Department of	2	2	-	-	-	1	-	-

TABLE 13
COMPARISON OF EMERGENCY RULEMAKING BY AGENCY
1980 THROUGH 1987
(continued)

<u>AGENCY</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
Rehabilitation Services, Department of	-	-	1	-	-	-	3	-
Retirement System of Illinois, State Employees'	3	1	1	-	1	1	-	-
Revenue, Department of	9	2	3	-	1	-	2	-
Savings and Loan Associations, Commissioner of	1	1	-	-	-	1	1	1
Scholarship Commission, State	-	1	2	1	-	-	2	2
Secretary of State	-	2	1	3	3	6	2	-
State Mandates Board of Appeals	-	-	1	-	-	1	-	-
State Police, Department of	-	-	-	-	-	-	1	-
Transportation, Department of	2	-	-	-	-	1	1	2
Travel Regulation Council	-	-	-	-	-	-	1	-
Treasurer	-	-	-	-	-	1	-	-
Veterans' Affairs, Department of	-	-	-	-	-	1	-	-
TOTAL	97	60	84	49	78	73	87	51

(1) The Department of Alcoholism and Substance Abuse, once a division of the Dangerous Drug Commission, became a separate agency in 1984.

(2) The Department of Personnel and the Department of Administrative Services were combined in 1982, and the name was changed to the Department of Central Management Services.

(3) The Department of Employment Security, once a bureau within the Department of Labor, became a separate agency in 1984.

TABLE 14
COMPARISON OF PEREMPTORY RULEMAKING BY AGENCY
1980 THROUGH 1987

<u>AGENCY</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
Aging, Department on								
Agriculture, Department of	1	-	-	-	-	-	-	-
Central Management Services, Department of	-	-	-	-	-	9	10	9
Children and Family Services, Department of	-	1	-	-	-	-	6	7
Commerce Commission, Illinois	-	-	1	-	1	-	-	-
Comptroller	-	-	1	-	-	-	-	-
Conservation, Department of	-	-	-	-	-	2	-	-
Corrections, Department of	-	1	3	1	-	-	-	-
Education, State Board of	7	-	-	-	-	-	-	-
Employment Security, Department of	-	-	-	-	-	1	-	-
Labor, Department of	(1)	-	1	-	-	-	-	-
Nature Preserves Commission	-	-	1	-	-	-	-	-
Pollution Control Board	4	3	7	10	11	9	14	10
Public Aid, Department of	5	22	6	3	9	2	3	4
Public Health, Department of	-	-	1	-	1	-	-	-
Rehabilitation Services, Department of	-	-	-	-	-	-	-	-
Retirement System of Illinois, State Employees'	-	-	-	1	-	-	-	1
Revenue, Department of	-	-	-	-	-	-	-	1
Travel Regulation Council	-	-	-	-	-	-	-	1
TOTAL	17	27	21	16	22	23	33	32

(1) The Department of Employment Security, once a bureau within the Department of Labor, became a separate agency in 1984.

January 1, 1988

APPENDIX B
THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

(Codified by West Publishing Company in Illinois Revised Statutes
at chapter 127, paragraphs 1001-1021.)

AN ACT in relation to administrative rules and procedures, and to amend an Act therein named and in connection therewith. (PA 79-1083, approved and effective September 22, 1975)

Section 1. SHORT TITLE. This Act shall be known and may be cited as "The Illinois Administrative Procedure Act." (PA 79-1083)

Section 2. APPLICABILITY. This Act applies to every agency as defined herein. Beginning January 1, 1978 in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. However if an agency has existing procedures on July 1, 1977 specifically for contested cases or licensing those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provision of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, such procedures shall remain in effect.

The provisions of this Act shall not apply to (1) preliminary hearings, investigations or practices where no final determinations affecting State funding are made by the State Board of Education, (2) legal opinions issued under Section 2-3.7 of The School Code, (3) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, admissions standards and procedures, and (4) the class specifications for positions and individual position descriptions prepared and maintained pursuant to the "Personnel Code"; however such specifications shall be made reasonably available to the public for inspection and copying. Neither shall the provisions of this Act apply to hearings under Section 20 of the "Uniform Disposition of Unclaimed Property Act."

Pay rates established pursuant to Section 8a of the Personnel Code shall be amended or repealed pursuant to the process set forth in Section 5.03 within 30 days after it becomes necessary to do so due to a conflict between the rates and the terms of a collective bargaining agreement covering the compensation of an employee subject to that Code. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1514, effective January 1, 1981; Amended by PA 83-0891, effective November 2, 1983; Amended by PA 84-469, effective January 1, 1986)

Section 3. DEFINITIONS. As used in this Act, unless the context otherwise requires, the terms specified in Section 3.01 through 3.12 have the meanings ascribed to them in those Sections. (PA 79-1083; Amended by PA 82-0783, effective July 13, 1982; Amended by PA 84-1452, effective January 5, 1987; Amended by PA 85-293, effective September 8, 1987)

Section 3.01. AGENCY. "Agency" means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, body politic and corporate of the State; and each administrative unit or corporate outgrowth of the State government which is created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. However, "agency" does not include:

- (a) the House of Representatives and Senate, and their respective standing and service committees;
- (b) the Governor; and
- (c) the justices and judges of the Supreme and Appellate Courts.

No entity shall be considered an "agency" for the purposes of this Act unless authorized by law to make rules or to determine contested cases. (PA 79-1083; Amended by PA 80-1457, effective January 1, 1979)

Section 3.02. CONTESTED CASE. "Contested case" means an adjudicatory proceeding, not including ratemaking, rulemaking, quasi-legislative, informational or similar proceedings, in which the individual legal rights, duties or privileges of a party are required by law to be determined by an agency only after an opportunity for hearing. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.03. HEARING EXAMINER. "Hearing examiner" means the presiding officer or officers at the initial hearing before each agency and each continuation thereof. (PA 79-1083)

Section 3.04. LICENSE. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. (PA 79-1083)

Section 3.05. LICENSING. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. (PA 79-1083)

Section 3.06. PARTY. "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (PA 79-1083)

Section 3.07 PERSON. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency. (PA 79-1083)

Section 3.08. RATE-MAKING OR RATE-MAKING ACTIVITIES. "Rate-making" or "Rate-making activities" means the establishment or review of or other exercise of control over the rates or charges for the products or services of any person, firm or corporation operating or transacting any business in this State. (PA 79-1083)

Section 3.09. RULE. "Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.10 SMALL BUSINESS. For the purpose of this Act, "small business" means a corporation organized under the "General Not For Profit Corporation Act of 1986", as amended, or a concern, including its affiliates, which is independently owned and operated, not dominant in its field and which employs fewer than 50 full-time employees or which has gross annual sales of less than \$4 million. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations. (Added by PA 82-492, effective January 1, 1982; Amended by PA 85-587, effective January 1, 1988)

Section 3.11. MUNICIPALITY. "Municipality" has the meaning ascribed to it in Section 1-1-2 of the Illinois Municipal Code. (Added by PA 84-1452, effective January 5, 1987)

Section 3.12. SMALL MUNICIPALITY. "Small municipality" means any municipality of 5,000 or fewer inhabitants and any municipality of more than 5,000 inhabitants which employs fewer than 50 persons full-time. For purposes of a specific rule, an agency may define small municipality to include employment of more than 50 persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small municipalities. (Added by PA 84-1452, effective January 5, 1987)

Section 4. ADOPTION OF RULES; PUBLIC INFORMATION, AVAILABILITY OF RULES. (a) In addition to other rulemaking requirements imposed by law, each agency shall:

1. adopt rules of practice setting forth the nature and requirements of all formal hearings;
2. make available for public inspection all rules adopted by the agency in the discharge of its functions.

(b) Each agency shall make available for public inspection all final orders, decisions and opinions, except those deemed confidential by state or federal statute and any trade secrets.

(c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. However, no Agency shall assert the invalidity of a rule which it has adopted pursuant to this Act when an opposing party has relied upon such rule.

(d) Rulemaking which creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the time that the first notice under Section 5.01 is published or when the rule is published under Section 5.02 or 5.03. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1562, effective January 16, 1981; Amended by P.A. 83-1387, effective January 1, 1985; Amended by P.A. 83-1453, effective January 1, 1985)

Section 4.01 REQUIRED RULES. (a) Each agency shall maintain as rules the following:

1. a current description of the agency's organization with necessary charts depicting same;
2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;
3. tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and
4. a current description of the agency's rulemaking procedures with necessary flow charts depicting same.

(b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section in lieu of any other provisions or requirements of this Act.

The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State as provided by paragraphs (a) and (b) of Section 6, and may become effective immediately. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 4.02. RULES IMPLEMENTING DISCRETIONARY POWERS -- STANDARDS. Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected. (Added by PA 81-1129, effective July 1, 1980)

Section 4.03. SMALL BUSINESS AND SMALL MUNICIPALITY FLEXIBILITY. When an agency proposes a new rule, or an amendment to an existing rule, which may have an impact on small businesses or small municipalities, the agency shall do each of the following: (a) The agency shall consider each of the following methods for reducing the impact of the rulemaking on small businesses or small municipalities. The agency shall reduce the impact by utilizing one or more of the following methods, if it finds that the methods are legal and feasible in meeting the statutory objectives which are the basis of the proposed rulemaking.

- (1) Establish less stringent compliance or reporting requirements in the rule for small businesses or small municipalities.

(2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses or small municipalities.

(3) Consolidate or simplify the rule's compliance or reporting requirements for small businesses or small municipalities.

(4) Establish performance standards to replace design or operational standards in the rule for small businesses or small municipalities.

(5) Exempt small businesses or small municipalities from any or all requirements of the rule.

(b) Prior to or during the notice period required under Section 5.01(a) of this Act, the agency shall provide an opportunity for small businesses or small municipalities to participate in the rulemaking process. The Agency shall utilize one or more of the following techniques. These techniques are in addition to other rulemaking requirements imposed by this Act or by any other Act.

(1) The inclusion in any advance notice of possible rulemaking of a statement that the rule may have an impact on small businesses or small municipalities.

(2) The publication of a notice of rulemaking in publications likely to be obtained by small businesses or small municipalities.

(3) The direct notification of interested small businesses or small municipalities.

(4) The conduct of public hearings concerning the impact of the rule on small businesses or small municipalities.

(5) The use of special hearing or comment procedures to reduce the cost or complexity of participation in the rulemaking by small businesses or small municipalities.

(c) Prior to the notice period required under Section 5.01(a) of this Act, the agency shall notify the Business Assistance Office of the Department of Commerce and Community Affairs when rules affect businesses. The Business Assistance Office shall prepare an impact analysis of the rule describing its effect on small businesses. The impact analysis shall be completed within the notice period as described in subsection (a) of Section 5.01. Upon completion of the analysis, the Business Assistance Office shall submit this analysis to both the Joint Committee on Administrative Rules and to the agency proposing the rule. The impact analysis shall contain the following:

1. A summary of the projected reporting, recordkeeping and other compliance requirements of the proposed rule.

2. A description of the types and an estimate of the number of small businesses to which the proposed rule will apply.

3. An estimate of the economic impact which the regulation will have on the various types of small businesses affected by the rulemaking.

4. A description of or a listing of alternatives to the proposed rule which would minimize the economic impact of the rule. Such alternative must be consistent with the stated objectives of the applicable statutes and regulations.

(Added by PA 82-492, effective January 1, 1982; Amended by PA 83-1341, effective September 7, 1984; Amended by PA 84-1452, effective January 5, 1987)

Section 5. PROCEDURE FOR RULEMAKING. (a) Prior to the adoption, amendment or repeal of any rule, each agency shall accomplish the actions required by Sections 5.01, 5.02 or 5.03, whichever is applicable.

(b) No action by any agency to adopt, amend or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

(c) The notice and publication requirements of this Section do not apply to a matter relating solely to agency management, personnel practices, or to public property, loans or contracts. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 5a. REGULATORY AGENDA. An agency may submit for publication in the Illinois Register a regulatory agenda to elicit public comments concerning any rule which the agency is considering proposing but for which no notice or proposed rulemaking activity has been submitted to the Illinois Register. A regulatory agenda shall consist of summaries of such rules. Each summary shall, in less than 2,000 words contain insofar as practicable:

- (a) a description of the rule;
- (b) the statutory authority the agency is exercising;
- (c) a schedule of the dates for any hearings, meetings or other opportunities for public participation in the development of the rule;
- (d) the date the agency anticipates submitting a notice of proposed rulemaking activity, if known;
- (e) the name, address and telephone number of the agency representative, knowledgeable on such rule, from whom any information may be obtained and to whom written comments may be submitted concerning such rule;
- (f) a statement as to whether the rule will affect small businesses as defined in this Act; and
- (g) any other information which may serve the public interest.

Nothing in this Section shall preclude an agency from adopting a rule which has not been summarized in a regulatory agenda; nothing in this Section shall require an agency to adopt a rule summarized in a regulatory agenda. The Secretary of State shall adopt rules necessary for the publication of a regulatory agenda, including but not limited to standard submission forms and deadlines. (Added by PA 84-954, effective January 1, 1986)

Section 5.01. GENERAL RULEMAKING. In all rulemaking to which Sections 5.02 and 5.03 do not apply, each agency shall:

(a) give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include:

1. The text of the proposed rule, or the old and new materials of a proposed amendment, or the text of the provision to be repealed;
2. The specific statutory citation upon which the proposed rule, the proposed amendment to a rule or the proposed repeal of a rule is based and is authorized;
3. A complete description of the subjects and issues involved;
4. For all proposed rules and proposed amendments to rules, an initial regulatory flexibility analysis, which shall contain a description of the types of small businesses subject to the rule; a brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule; and a description of the types of professional skills necessary for compliance; and
5. The time, place and manner in which interested persons may present their views and comments concerning the proposed rulemaking.

During the first notice period, the agency shall provide all interested persons who submit a request to comment within the first 14 days of the notice period reasonable opportunity to submit data, views, arguments or comments, which may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register shall indicate the manner selected by the agency for such submissions. The agency shall consider all submissions received.

The agency shall hold a public hearing on the proposed rulemaking, during the first notice period, in the following cases: (1) the agency finds that a public hearing would facilitate the submission of views and comments which might not otherwise be submitted; (2) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least 100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government which may be affected. At the public hearing, the agency shall allow interested persons to present views and comments on the proposed rulemaking. Such a public hearing in response to a request for a hearing may not be held less than 20 days after the publication of the notice of proposed rulemaking in the Illinois Register, unless notice of the public hearing is included in the notice of proposed rulemaking. A public hearing on proposed rulemaking may not be held less than 10 days before submission of the notice required under paragraph (b) of this Section to the Joint Committee on Administrative Rules. Each agency may prescribe reasonable rules for the conduct of public hearings on proposed rulemaking to prevent undue repetition at such hearings. Such hearings must be open to the public and recorded by stenographic or mechanical means.

(b) provide up to 45 days additional notice of the proposed rulemaking to the Joint Committee on Administrative Rules. The period commencing on the day written notice is received by the Joint Committee shall be known as the second notice period, and shall expire 45 days thereafter unless prior to that time the agency and the Joint Committee have agreed to extend the second notice period beyond 45 days for a period not to exceed an additional 45 days, or the agency has received a statement of objection from the Joint Committee, or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include: (1) the text and location of any changes made to the proposed rulemaking during the first

notice period; (2) for all proposed rules and proposed amendments to rules, a final regulatory flexibility analysis, which shall contain a summary of issues raised by small businesses during the first notice period; and a description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized; and (3) if written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register pursuant to Paragraph (a) of this Section, an analysis of the economic and budgetary effects of the proposed rulemaking. After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee. The agency shall also send a copy of the final regulatory flexibility analysis to each of the small businesses which have presented views or comments on the proposed rulemaking during the first notice period and to any interested person who requests a copy during the first notice period. The agency may charge a reasonable fee for providing such copies to cover postage and handling costs.

(c) after the expiration of second notice period, after notification from the Joint Committee that no objection will be issued, or after response by the agency to a statement of objection issued by the Joint Committee, whichever is applicable, the agency shall file, pursuant to Section 6 of this Act, a certified copy of each rule, modification, or repeal of any rule adopted by it, which shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing, unless a later effective date is required by statute or is specified in the rule.

(d) No rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking under paragraph (a) commenced. Any period during which the rulemaking is prohibited from being filed under Section 7.06a shall not be considered in calculating this one-year time period. In addition, no rule or modification which contains an incorporation by reference under subsection (b) of Section 6.02 may be adopted and filed with the Secretary of State pursuant to paragraph (c) of Section 5.01 and Section 6 of this Act unless the agency adopting and filing the rule is in receipt of written approval from the Joint Committee on Administrative Rules. This paragraph (d) applies to any rule or modification or repeal of any rule which has not been filed with the Secretary of State prior to the effective date of this amendatory Act of 1981. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-242, effective January 1, 1982; Amended by PA 82-492, effective January 1, 1982; Amended by PA 82-783, effective July 13, 1982; Amended by PA 84-784, effective January 1, 1986; Amended by PA 84-1329, effective September 9, 1986).

Section 5.02 EMERGENCY RULEMAKING. "Emergency" means the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare. Where any agency finds that an emergency exists which requires adoption of a rule upon fewer days than is required by Section 5.01, and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing, upon filing a notice of emergency rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall include the text of the emergency rule and shall be published in the Illinois Register.

Consent orders or other court orders adopting settlements negotiated by an agency may be adopted pursuant to this Section. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing pursuant to Section 6, or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons therefor shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5.01 of this Act is not precluded. No emergency rule may be adopted more than once in any 24 month period, except that this limitation on the number of emergency rules which may be adopted in a 24 month period does not apply to emergency rules which make additions to and deletions from the Drug Manual pursuant to Section 5-5.16 of the Illinois Public Aid Code or the generic drug formulary pursuant to Section 3.14 of the Illinois Food, Drug, and Cosmetic Act. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 84-22, effective July 18, 1985; Amended by PA 84-576, effective January 1, 1986; Amended by PA 85-451, effective September 17, 1987)

Section 5.03. PEREMPTORY RULEMAKING. "Peremptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with general rulemaking requirements imposed by Section 5.01 and which preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Peremptory rulemaking shall not be used to implement consent orders or other court orders adopting settlements negotiated by the agency. Where any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, federal rules and regulations, or court order, as stated in the notice of rulemaking. Notice of rulemaking under this Section shall be published in the Illinois Register, and shall specifically refer to the appropriate state or federal court order or federal law, rules and regulations, and shall be in such form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 84-576, effective January 1, 1986)

Section 5.04 AUTOMATIC REPEAL OF RULES. A rule may provide for its automatic repeal on a date specified in the rule. The repeal shall be effective on the date specified, provided that notice of the repeal is published in the Illinois Register not less than 30 nor more than 60 days prior to the effective date of the repeal. This Section shall not apply to any rules filed pursuant to Section 5.02 of this Act. (Added by PA 83-1387, effective January 1, 1985)

Section 6. FILING OF RULES. (a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection.

(b) Concurrent with the filing of any rule pursuant to this Section, the filing agency shall submit to the Secretary of State for publication in the next available issue of the Illinois Register a notice of adopted rules. Such notice shall include:

1. The text of the adopted rule, which shall include: if the material is a new rule, the full text of the new rule; or if the material is an amendment to a rule or rules, the full text of the rule or rules as amended; or if the material is a repealer, such notice of repeal.

2. The name, address and telephone number of an individual who will be available to answer questions and provide information to the public concerning the adopted rules.

3. Such other information as the Secretary of State may by rule require in the interest of informing the public. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1979; Amended by PA 81-1044, effective October 1, 1979; Amended by PA 82-298, effective January 1, 1982)

Section 6.01. FORM AND PUBLICATION OF NOTICES. The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with him, and may refuse to accept for filing such certified copies as are not in compliance with such rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day unless such day is an official State holiday in which case the Illinois Register shall be published on the next following business day and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-689, effective July 1, 1982; Amended by PA 83-638, effective September 21, 1983)

Section 6.02. INCORPORATION BY REFERENCE. (a) An agency may incorporate by reference, in its rules adopted in accordance with Section 5 of this Act, rules and regulations of an agency of the United States or rules, regulations, standards and guidelines of a nationally recognized organization or association without publishing the incorporated material in full. The reference in the agency rules must fully identify the incorporated matter by location and date, and must state that the rule, regulation, standard or guideline does not include any later amendments or editions. The agency adopting the rule, regulation, standard or guideline shall maintain a copy of the referenced rule, regulation, standard or guideline and shall make it available to the public upon request for inspection and copying at no more than cost. An agency may also at its discretion file a copy of the referenced rule, regulation, standard or guideline with the State Library. An agency may incorporate by reference such matters in its rules only if the agency, organization or association originally issuing the rules only if the agency, organization or association originally issuing the matter makes copies readily

available to the public. This Section shall not apply to any agency internal manual.

For any law imposing taxes on or measured by income, the Department of Revenue may promulgate rules imposing taxes on or measured by income which include incorporations by reference of federal rules or regulations without identifying the incorporated matter by date and without including a statement that the incorporation does not include later amendments.

(b) As provided by this subsection, an agency may incorporate by reference in its rules adopted in accordance with Section 5.01 of this Act guidelines or standards of an agency of the United States, without publishing the incorporated material in full, provided that the incorporated material is readily available to the public. The reference in the agency rules must fully identify the incorporated matter by location and date, and must state that the guideline or standard does not include any later amendments or editions. An agency may incorporate by reference such matters in its rules only if the agency of the United States issuing or distributing the matter, or the organization, association or other entity acting on behalf of the agency of the United States makes copies readily available to the public. The agency adopting the rule shall maintain a copy of the referenced guideline or standard and shall make it available to the public upon request for inspection and copying at no more than cost. An agency may also at its discretion file a copy of referenced guidelines or standards with the State Library. Use of the incorporation by reference procedure under this subsection (b) must be approved by the Joint Committee on Administrative Rules prior to the submission of the written notice required pursuant to paragraph (b) of Section 5.01 of this Act. An agency seeking to adopt a rule containing incorporation by reference under this subsection (b) shall submit a written request to the Joint Committee on Administrative Rules. In determining whether to approve an incorporation by reference, the Joint Committee shall use the following standard: whether or not the material sought to be incorporated is readily for public inspection. No rule which contains an incorporation by reference pursuant to this subsection (b) may be accepted by the Secretary of State for adoption and filing pursuant to paragraph (c) of Section 5.01 and Section 6 of this Act, unless the agency is in receipt of written approval from the Joint Committee on Administrative Rules. (Added by PA 83-638, effective September 21, 1983; Amended by PA 84-784, effective January 1, 1986; Amended by PA 85-340, effective September 10, 1987)

Section 7. CODIFICATION OF RULES - PUBLICATION. (a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules on or before July 1, 1980. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system on or before October 1, 1980. Such schedule may be by sections of the codification system and shall require approximately one-fourth of the rules to be converted to the codification system by each October 1, starting in 1981 and ending in 1984. All rules on file with the Secretary of State and in effect on October 1, 1984, shall be in compliance with the uniform system for the codification of rules. Rules not so codified as of October 1, 1984, are void, shall be withdrawn by the Secretary of State from the permanent register of the rules, and shall not be published by the Secretary of State in either the Illinois Administrative Code or in the Illinois Register. The Secretary of State shall not adopt any codification system or

schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.

(b) If no substantive changes are made by the agency in amending existing rules to comply with the codification system, such codified rules may be adopted until October 1, 1984, without requiring notice or publication of the text of rules pursuant to Section 5. In such a case, the publication requirement shall be satisfied by the publication in the Illinois Register of a notice stating that the agency has adopted the rules to comply with the codification system, that no substantive changes have been made in the rules and that the State Library has reviewed and approved the codification of the rules. The notice shall include the current names and numbers of the rules being codified, an outline of the headings of the sections of the rules as codified and may also include a table indicating the relationship between any rule numbers previously used by the agency and the numbering system of the codified rules. The agency shall provide the text of such rules as codified to the State Library for review and necessary changes and recommendations at least 30 days prior to the publication of such notice. Whenever the codification of an emergency or peremptory rule is changed subsequent to its publication as adopted in the Illinois Register, a notice of such change, in the manner set forth in this subsection, shall be published in the next available issue of the Illinois Register. Such a change in the rule's codification shall not affect its validity or the date upon which it became effective.

(c) Each rule proposed in compliance with the codification system shall be reviewed by the State Library under the Secretary of State prior to the expiration of the public notice period provided by Section 5.01(a) of this Act or prior to the publication of the notice required under subsection (b) of this section. The State Library shall cooperate with agencies in its review to ensure that the purposes of the codification system are accomplished. The State Library shall have the authority to make changes in the numbering and location of the rule in the codification scheme, providing such changes do not affect the meaning of the rules. The State Library may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The State Library may add notes concerning the statutory authority, dates proposed and adopted and other similar notes to the text of the rules, if such notes are not supplied by the agency. This review by the State Library shall be for the purpose of insuring the uniformity of and compliance with the codification system. The State Library shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables and other aids for locating rules to assist the public in the use of the Code.

(d) The State Library shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes.

The agency shall in the notice required by Section 5.01(b) of this Act, or if such notice is not required, at least 10 days prior to the publication of the notice required under subsection (b) of this Section, provide to the Joint Committee a response to the recommendations of the State Library including any reasons for not adopting the recommendations.

(e) In the case of reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law, which affects rules on file with the Secretary of State, the State Library shall notify the Governor, the Attorney General, and the agencies involved of the effects upon such rules on file. If the Governor or the agencies involved do not respond to the State Library's notice within 45 days by instructing the State Library to delete or transfer the rules, the State Library may delete or place such rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General and the agencies involved.

(f) The Secretary of State shall publish an Illinois Administrative Code as effective January 1, 1985. The Code shall be published on or before June 1, 1985, and the Secretary of State shall update each section of the Code at least annually thereafter. Such Code shall contain the complete text of all rules of all State agencies filed with his office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the State Library. The Secretary of State shall design the Illinois Register to supplement such Code. The Secretary of State shall make copies of the Code available generally at a price covering publication and mailing costs.

(g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such presumption. Judicial notice shall be taken of the text of each rule published in the Code or Register.

(h) The codification system, the indexes, tables, and other aids for locating rules prepared by the State Library, notes and other materials developed under this Section in connection with Administrative Code shall be the property of the State. No person may attempt to copyright or publish for sale such materials except the Secretary of State as provided in this Section. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1348, effective July 16, 1980; Amended by PA 83-555, effective January 1, 1984; Amended by PA 83-556, effective January 1, 1984; Amended by PA 83-1362, effective September 11, 1984)

Section 7.01. CERTIFICATION OF RULES FILED WITH THE SECRETARY OF STATE. (a) Beginning January 1, 1978, whenever a rule, or modification or repeal of any rule, is filed with the Secretary of State, the Secretary of State within three working days after such filing shall send a certified copy of such rule, modification or repeal to the Joint Committee on Administrative Rules established in Section 7.02.

(b) Any rule on file with the Secretary of State on January 1, 1978 shall be void 60 days after that date unless within such 60 day period the issuing agency certifies to the Secretary of State that the rule is currently in effect.

Within 45 days after the receipt of any certification pursuant to this sub-section (b), the Secretary of State shall send the Joint Committee on Administrative Rules established in Section 7.02 a copy of each agency's certification so received along with a copy of the rules covered by the certification. (Added by PA 80-1035, effective September 27, 1977)

Section 7.02. ESTABLISHMENT AS LEGISLATIVE SUPPORT SERVICES AGENCY - AGENDA - PUBLICATION OF INFORMATION - FEES. The Joint Committee on Administrative Rules is established as a legislative support services agency subject to the Legislative Commission Reorganization Act of 1984.

When feasible the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least five days prior to the meeting in the Illinois Register. The Joint Committee may also weekly, or as often as necessary, submit for publication in the Illinois Register lists of dates on which notices under Section 5.01 of this Act were received and the dates on which the proposed rulemakings will be considered. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.

The Joint Committee may charge reasonable fees for copies of documents or publications to cover the cost of copying or printing. However, the Joint Committee shall provide copies of documents or publications without cost to agencies which are directly affected by recommendations or findings included in such documents or publications. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 82-372, effective September 2, 1981; Amended by PA 83-638, effective September 21, 1983; Amended by 83-1257, effective August 15, 1984)

Section 7.03. ADMINISTRATION OF OATHS OR AFFIRMATIONS - AFFIDAVITS OR DEPOSITIONS - SUBPOENA. (a) The Executive Director of the Joint Committee or any person designated by him may administer oaths or affirmations, take affidavits or depositions of any person.

(b) The Executive Director, upon approval of majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person, or the production for the Joint Committee of any records, books, papers, contracts or other documents.

If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt. (Added by PA 80-1035, effective September 27, 1977)

Section 7.04. POWERS OF JOINT COMMITTEE. The Joint Committee shall have the following powers under this Act:

1. The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules. Such function shall be advisory only, except as provided in Sections 7.06a and 7.07a.

2. The Joint Committee may undertake studies and investigations concerning rulemaking and agency rules.

3. The Joint Committee shall monitor and investigate compliance of agencies with the provisions of this Act, make periodic investigations of the rulemaking activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

4. Hearings and investigations conducted by the Joint Committee under this Act may be held at such times and places within the State as such Committee deems necessary.

5. The Joint Committee shall have the authority to request from any agency an analysis of the:

a. effect of a new rule, amendment or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues;

b. agency's evaluation of the submissions presented to the agency pursuant to Section 5.01 of this Act;

c. a description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment or repealer;

d. agency's justification and rationale for the intended rule, amendment or repealer.

6. Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or repealer by the Joint Committee or the General Assembly. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1044, effective October 1, 1978; Amended by PA 81-1035, effective January 1, 1980; Amended by PA 81-1514, effective January 1, 1981)

Section 7.05. RESPONSIBILITIES OF JOINT COMMITTEE. The Joint Committee shall have the following responsibilities under this Act:

1. The Joint Committee shall conduct a systematic and continuing study of the rules and rulemaking process of all state agencies, including those agencies not covered in Section 3.01 of this Act, for the purpose of improving the rulemaking process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions and correcting grammatical, typographical and like errors not affecting the construction or meaning of the rules, and it shall make recommendations to the appropriate affected agency.

2. The Joint Committee shall review the statutory authority on which any administrative rule is based.

3. The Joint Committee shall maintain a review program, to study the impact of legislative changes, court rulings and administrative action on agency rules and rulemaking.

4. The Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete,

inconsistent or otherwise deficient. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.06. EXAMINATION OF PROPOSED RULE, AMENDMENT OR REPEAL OF RULE BY THE JOINT COMMITTEE - DETERMINATIONS - EVALUATION OF STATE FORMS. (a) The Joint Committee may examine any proposed rule, amendment to a rule, and repeal of a rule for the purpose of determining whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based, whether the rule, amendment to a rule or repeal of a rule is in proper form and whether the notice was given prior to its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment or repeal. In addition, the Joint Committee may consider whether the agency has considered alternatives to the rule which are consistent with the stated objectives of both the applicable statutes and regulations, and whether the rule is designed to minimize economic impact on small businesses.

(b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.

(c) If within the second notice period the Joint Committee certifies its objections to the issuing agency then that agency shall within 90 days of receipt of the statement of objection:

1. modify the proposed rule, amendment or repealer to meet the Joint Committee's objections;
2. withdraw the proposed rule, amendment, or repealer in its entirety, or;
3. refuse to modify or withdraw the proposed rule, amendment or repealer.

(d) If an agency elects to modify a proposed rule, amendment or repealer to meet the Joint Committee's objections, it shall make such modifications as are necessary to meet the objections and shall resubmit the rule, amendment or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment or repealer to meet the Joint Committee's objections to the Secretary of State, which notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of such notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.

(e) If an agency elects to withdraw a proposed rule, amendment or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee, in writing, of its election and shall submit a notice of the withdrawal to the Secretary of State which shall be published in the next available issue of the Illinois Register.

(f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment or repealer, within the time prescribed in subsection (c) shall constitute withdrawal of the proposed rule, amendment or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State which shall be published in the next available issue of the Illinois Register and the Secretary of State shall refuse to accept for filing a certified copy of such proposed rule, amendment or repealer under the provisions of Section 6.

(g) If an agency refuses to modify or withdraw the proposed rule, amendment or repealer so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

(h) No rule, amendment or repeal of a rule shall be accepted by the Secretary of State for filing under Section 6, if such rulemaking is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section.

(i) The Joint Committee shall evaluate and analyze all State forms which have been developed or revised after the effective date of this amendatory Act of 1984 to ascertain the burden, if any, of complying with such forms by small businesses. Such evaluation and analysis shall occur during the Joint Committee's review conducted pursuant to Section 7.08 of this Act. In the event the Joint Committee determines that any such form is unduly burdensome to small businesses the Joint Committee may object to such form or make specific recommendations for change in such form. Objections to such forms shall be made in the manner prescribed in Section 7.07 of this Act. For the purposes of this subsection the terms "State form" and "form" shall mean any document or piece of paper used by the State agency requesting or transmitting information, printed or reproduced by whatever means, usually with blank spaces for the entry of additional information to be used in any transaction between the State of Illinois and private sector businesses. These include, but are not limited to, grant applications, licensing applications, permit applications, and requests for proposal applications, but do not include books, pamphlets, newsletters and intra-agency forms which do not affect the rights of or procedures available to persons or entities outside the State agency. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979; Amended by PA 83-1341, effective September 7, 1984; Amended by PA 84-1329, effective September 9, 1986)

Section 7.06a. JOINT COMMITTEE STATEMENT ON PROPOSED RULE, AMENDMENT OR REPEALER, OBJECTIONABLE UNDER COMMITTEE'S REVIEW STANDARDS. (a) If the Joint Committee determines that adoption and effectiveness of a proposed rule, amendment or repealer or portion of a proposed rule, amendment or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07 or 7.08 of this Act and would constitute a

serious threat to the public interest, safety or welfare, the Joint Committee may at any time prior to the taking effect of such proposed rule, amendment or repealer issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The proposed rule, amendment or repealer or the portion of the proposed rule, amendment or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State nor take effect for at least 180 days from receipt of the statement by the Secretary of State. The agency may not enforce or invoke for any reason a proposed rule, amendment or repealer or any portion thereof which is prohibited from being filed by this subsection during this 180 day period.

(c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), introduce in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the prohibition of the proposed rule, amendment or repealer or the portion thereof to which the statement was issued from being filed and taking effect. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the agency shall be prohibited from filing the proposed rule, amendment or repealer or the portion thereof and the proposed rule, amendment or repealer or the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment or repealer or the portion thereof which the General Assembly has prohibited the agency from filing as provided in this subsection. If the 180 day period provided in subsection (b) expires prior to passage of the joint resolution, the agency may file the proposed rule, amendment or repealer or the portion thereof as adopted and it shall take effect. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.07. EXAMINATION OF RULE BY THE JOINT COMMITTEE - DETERMINATION. (a) The Joint Committee may examine any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form.

(b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.

(c) Within 90 days of receipt of the certification, the agency shall:

1. Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection;
2. Notify the Joint Committee that it has elected to repeal the rule, or;
3. Notify the Joint Committee that it refuses to amend or repeal the rule.

(d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5 of this Act. The Joint Committee shall give priority to rules so amended when setting its agenda.

(e) If the agency elects to repeal a rule as a result of the Joint Committee objections, it shall notify the Joint Committee, in writing, of its election and shall initiate rulemaking procedures for that purpose by giving notice as required by Section 5 of this Act.

(f) If the agency elects to amend or repeal a rule as a result of the Joint Committee objections, it shall complete the process within 180 days after giving notice in the Illinois Register.

(g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.

(h) If an agency refuses to amend or repeal a rule so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to recommend legislative action, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.07a. JOINT COMMITTEE STATEMENT ON RULE ADOPTED UNDER SECTIONS 5.02 OR 5.03 AND DEEMED OBJECTIONABLE UNDER COMMITTEE'S REVIEW STANDARDS. (a) If the Joint Committee determines that a rule or portion of a rule adopted under Sections 5.02 or 5.03 of this Act is objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07, or 7.08 of this Act and constitutes a serious threat to the public interest, safety or welfare, the Joint Committee may issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The effectiveness of the rule or the portion of a rule shall be suspended immediately for at least 180 days upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate such suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules or portions of rules suspended in accordance with this subsection shall become effective again upon the expiration of 180 days from receipt of the statement by the Secretary of State if the General Assembly does not continue the suspension as provided in subsection (c). The agency may not enforce, nor invoke for any reason, a rule or portion of a rule which has been suspended in accordance with this subsection. During the 180 days, the agency may not

file, nor may the Secretary of State accept for filing, any rule having substantially the same purpose and effect as rules or portions of rules suspended in accordance with this subsection.

(c) The Joint Committee shall, as soon as practicable after issuance of a statement under subsection (a), cause to be introduced in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove such rule or portion of a rule from the collection of effective rules. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.08. PERIODIC EVALUATION OF RULES BY JOINT COMMITTEE - CATEGORIES. (a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee shall develop a schedule for this periodic evaluation. In developing this schedule, the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. Such schedule shall include at least the following categories:

1. human resources;
2. law enforcement;
3. energy;
4. environment;
5. natural resources;
6. transportation;
7. public utilities;
8. consumer protection;
9. licensing laws;
10. regulation of occupations;
11. labor laws;
12. business regulation;
13. financial institutions; and
14. government purchasing.

(b) Whenever evaluating any rules as required by this Section, the Joint Committee's review shall include an examination of:

1. organizational, structural and procedural reforms which effect rules or rulemaking;
2. merger, modification, establishment or abolition of regulations;
3. eliminating or phasing out outdated, overlapping or conflicting regulatory jurisdictions or requirements of general applicability; and
4. economic and budgetary effects. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1035, effective October 1, 1979)

Section 7.09. ADMINISTRATION OF ACT. The Joint Committee shall have the authority to adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers and duties. (Added by PA 80-1035, effective September 27, 1977)

Section 7.10. REPORT OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS BY JOINT COMMITTEE. The Joint Committee shall report its findings, conclusions and recommendations including suggested legislation to the General Assembly by February 1, of each year.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Council, as required by Section 3.1 of "An Act to revise the law in relation to the General Assembly," approved February 25, 1874, as amended, and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 83-784, effective January 1, 1984)

Section 8. PETITION FOR ADOPTION OF RULES. (a) An agency shall, in accordance with Section 5, adopt rules which implement recently enacted legislation of the General Assembly in a timely and expeditious manner.

(b) Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. If, within 30 days after submission of a petition, the agency has not initiated rulemaking proceedings in accordance with Section 5 of this Act, the petition shall be deemed to have been denied. (PA 79-1083; Amended by PA 83-529, effective January 1, 1984)

Section 9. DECLARATORY RULINGS BY AGENCIES. (a) Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling prior to making it available. (PA 79-1083; Amended by PA 82-727, effective November 12, 1981)

(b) Overlapping regulations. (1) Any persons subject to a rule imposed by a State agency and to a similar rule imposed by the federal government may petition the agency administering the State rule for a declaratory ruling as to whether compliance with the federal rule will be accepted as compliance with the State rule.

(2) If the agency determines that compliance with the federal rule would not satisfy the purposes or relevant provisions of the State law involved, the agency shall so inform the petitioner in writing, stating the reasons therefor, and may issue a declaratory ruling to that effect.

(3) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law involved but that it would not satisfy the relevant provisions of the State rule involved,

the agency shall so inform the petitioner and the Joint Committee on Administrative Rules, and the agency may initiate a rulemaking proceeding in accordance with Section 5 to consider revising such rule to accept compliance with the federal rule in a manner that is consistent with the purposes and relevant provisions of the State law.

(4) If the agency determines that compliance with the federal rule would satisfy the purposes and relevant provisions of the State law and the State rule involved, the agency shall issue a declaratory ruling indicating its intention to accept compliance with the federal rule as compliance with the State rule and the terms and conditions under which it intends to do so. (PA 79-1083; Amended by PA 82-727, effective November 12, 1981; Amended by PA 85-317 and PA 85-367, effective September 11, 1987)

Section 10. CONTESTED CASES - NOTICE - HEARING. (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Such notice shall be served personally or by certified or registered mail upon such parties or their agents appointed to receive service of process and shall include:

1. a statement of the time, place and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular Sections of the statutes and rules involved; and
4. except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted.

(b) Opportunity shall be afforded all parties to be represented by legal counsel, and to respond and present evidence and argument.

(c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. (PA 79-1083)

Section 11. RECORD IN CONTESTED CASES. (a) The record in a contested case shall include:

1. all pleadings (including all notices and responses thereto), motions, and rulings;
2. evidence received;
3. a statement of matters officially noticed;
4. offers of proof, objections and rulings thereon;
5. proposed findings and exceptions;
6. any decision, opinion or report by the hearing examiner;
7. all staff memoranda or data submitted to the hearing examiner or members of the agency in connection with their consideration of the case; and
8. any communication prohibited by Section 15 of this Act, but such communications shall not form the basis for any finding of fact.

(b) Oral proceedings or any part thereof shall be recorded stenographically or by such other means as to adequately ensure the preservation of such testimony or oral proceedings and shall be transcribed on request of any party.

(c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. (PA 79-1083; Amended by PA 82-783, effective July 13, 1982)

Section 12. RULES OF EVIDENCE - OFFICIAL NOTICE. In contested cases: (a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

(b) Subject to the evidentiary requirements of subsection (a) of this Section, a party may conduct cross-examination required for a full and fair disclosure of the facts.

(c) Notice may be taken of matters of which the Circuit Courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. (PA 79-1083)

Section 13. PROPOSAL FOR DECISION. Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument, to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the persons who conducted the hearing or one who has read the record. (PA 79-1083)

Section 14. DECISIONS AND ORDERS. A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request, a

copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases except to the extent such provisions are waived pursuant to Section 18 of this Act and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 2 of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 14.1 EXPENSES - ATTORNEY FEES. (a) In any contested case initiated by any agency which does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 42.611 of the Civil Practice Law, any allegation made by the agency without reasonable cause and found to be untrue shall subject the agency making such allegation to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred in defending against that allegation by the party against whom the case was initiated. A claimant may not recover litigation expenses when the parties have executed a settlement agreement which, while not stipulating liability or violation, requires the claimant to take correction action or pay a monetary sum.

The claimant shall make his demand for such expenses to the agency. If the claimant is dissatisfied because of the agency's failure to make any award or because of the insufficiency of the agency's award, the claimant may petition the Court of Claims for the amount deemed owed. If allowed any recovery by the Court of Claims, the claimant shall also be entitled to reasonable attorney's fees and the reasonable expenses incurred in making his claim for the expenses incurred in the administrative action. The Court of Claims may reduce the amount of the litigation expenses to be awarded under this Section, or deny an award, to the extent that the claimant engaged in conduct during the course of the proceeding which unduly and unreasonably protracted the final resolution of the matter in controversy.

(b) In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority or the agency's failure to follow statutory procedures in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. (Added by PA 82-670, effective January 1, 1982; Amended by PA 82-1057, effective February 11, 1983; Amended by PA 85-587, effective January 1, 1988)

Section 15. EX PARTE CONSULTATIONS. Except in the disposition of matters which they are authorized by law to entertain or dispose of on an ex parte basis, neither agency members, employees nor hearing examiners shall, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or his representative, except upon notice and opportunity for all parties to participate. However, an agency member may communicate with other members of the agency, and an

agency member or hearing examiner may have the aid and advice of one or more personal assistants. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 16. LICENSES. (a) When any licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

(c) No agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action, and an opportunity for hearing in accordance with the provisions of this Act concerning contested cases. At any such hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, or continuation or renewal of the license. If, however, the agency finds that the public interest, safety or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action which proceedings shall be promptly instituted and determined.

Any application for renewal of a license which contains required and relevant information, data, material or circumstances which were not contained in an application for the existing license, shall be subject to the provisions of Section 16(a) of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 17. RATE-MAKING. Every agency which is empowered by law to engage in ratemaking activities shall establish by rule, not inconsistent with the provisions of law establishing such ratemaking jurisdiction, the practice and procedure to be followed in ratemaking activities before such agency. (PA 79-1083)

Section 18. WAIVER. Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties. (PA 79-1083)

Section 19. (PA 79-1083; Repealed as of January 1, 1978, by PA 80-1035, effective September 27, 1977)

Section 20. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable. (PA 79-1083)

Section 21. EFFECTIVE DATE. This Act takes effect upon its becoming a law. (PA 79-1083, effective September 22, 1975)

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